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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

FOURTH AGE LTD., *et al*,
Plaintiffs,
v.
WARNER BROS. DIGITAL
DISTRIBUTION, *et al*,
Defendants.

Case No. 12-9912-ABC (SHx)

DISCOVERY MATTER

**DECLARATION OF JULIA R.
HAYE IN SUPPORT OF JOINT
STIPULATION REGARDING
WARNER'S MOTION TO
COMPEL ADDITIONAL
DEPOSITIONS**

JOINT STIPULATION FILED
CONCURRENTLY HERewith

Judge: Hon. Audrey B. Collins
Magistrate: Hon. Stephen J. Hillman

WARNER BROS. DIGITAL
DISTRIBUTION INC., *et al*,
Counterclaim
Plaintiffs,
v.
FOURTH AGE LTD., *et al*,
Counterclaim
Defendants.

Hearing Date: March 17, 2014
Hearing Time: 2:00 p.m.

Discovery Cut-Off: April 15, 2014

PUBLIC VERSION - REDACTED

**[CONFIDENTIAL VERSION
FILED PROVISIONALLY
UNDER SEAL]**

DECLARATION OF JULIA R. HAYE

I, Julia R. Haye, declare:

1. I am an attorney duly licensed to practice in all of the courts of the State of California and I am a Partner of Greenberg Glusker Fields Claman & Machtinger LLP, attorneys of record for Fourth Age Limited, Priscilla Mary Anne Reuel Tolkien, as Trustee of the Tolkien Trust, the J.R.R. Tolkien Estate Limited, Harper Collins Publishers, Ltd., Unwin Hyman, Ltd. and George Allen & Unwin (Publishers), Ltd. (the "Tolkien/HC Parties") herein. The facts set forth herein are of my own personal knowledge and if sworn I could and would testify competently thereto under oath.

2. Attached hereto as Exhibit "A" is a true and correct copy of those portions of the transcript of Cathleen Blackburn's deposition taken in this action on December 10, 2013 (the "Blackburn Deposition"), which were not designated confidential.

3. Attached hereto as Exhibit "B" is a true and correct copy of those portions of the transcript of the Blackburn Deposition which were designated confidential.

4. Attached hereto as Exhibit "C" is a true and correct copy of those portions of the transcript of Steven Maier's deposition taken in this action on December 13, 2013 (the "Maier Deposition"), which were not designated confidential.

5. Attached hereto as Exhibit "D" is a true and correct copy of those portions of the transcript of the Maier Deposition which were designated confidential.

6. Throughout the course of this action, Warner and Zaentz have asserted a joint defense/common interest privilege with respect to their communications concerning this action, and have redacted communications between them regarding

1 this lawsuit. In addition, Warner and Zaentz have taken joint positions with respect
2 to discovery issues in this action.

3 7. On the morning of January 30, 2014, I sent John C. Ulin and Molly M.
4 Lens, Zaentz's and Warner's counsel respectively, a meet and confer letter
5 addressing, among other things, Warner's request for additional time to depose Mr.
6 Maier and Ms. Blackburn. In my January 30th letter, solely as a matter of
7 compromise, plaintiffs offered to produce Ms. Blackburn for an additional half day
8 of deposition, provided that defendants forego any further time with Mr. Maier. A
9 true and correct copy of my January 30th letter is attached hereto as Exhibit "E."

10 8. Thereafter, on the afternoon of January 30th, I participated in a
11 telephonic meet and confer conference with counsel for Zaentz, Warner and several
12 other Greenberg Glusker lawyers to discuss the issues outlined in my January 30th
13 letter, including, without limitation, Warner's request for additional time to depose
14 Mr. Maier and Ms. Blackburn. During that call, Warner and Zaentz refused to
15 accept plaintiffs' compromise offer of an additional half day of deposition with Ms.
16 Blackburn, provided that defendants forego any further time with Mr. Maier, and
17 instead insisted on an additional full day with each.

18 9. Attached hereto as Exhibit "F" is a true and correct copy of an email,
19 dated October 1, 2013, from Ms. Lens, counsel for Warner, to my colleague,
20 Ricardo P. Cestero.

21 10. Attached hereto as Exhibit "G" is a true and correct copy of an email,
22 dated July 29, 2013, from Ms. Lens to Mr. Cestero.

23 11. On February 18, 2014, my colleague, JoAnna Blythe, ran a search for
24 the following names across Warner's and Zaentz's document productions: "Battle,"
25 "Bendich," "Magnani," and "Zinkin." The search returned 4,636 documents for
26 "Battle"; 2,300 documents for "Bendich"; 1,846 documents for "Magnani"; and
27 582 documents for "Zinkin."
28

12. Attached hereto as Exhibit “H” is a true and correct copy of the Tolkien/HC Parties’ Initial Disclosures, dated March 28, 2013.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

EXHIBIT A

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

FOURTH AGE LTD., et al.,)
Plaintiffs,) Case No. 12-9912-ABC (SHx)
vs.)
WARNER BROS. DIGITAL)
DISTRIBUTION, et al.,)
Defendants.)
_____)
WARNER BROS. DIGITAL)
DISTRUBUTION INC., et al.,)
Counterclaim)
Plaintiffs,)
vs.)
FOURTH AGE LTD., et al.,)
Counterclaim)
Defendants.)
_____)

VIDEOTAPED DEPOSITION OF CATHLEEN BLACKBURN
Los Angeles, California
Tuesday, December 10, 2013

Reported by: SHANDA GABRIEL, CSR No. 10094
Job No. 1779924
PAGES 1-376
CONFIDENTIAL PAGES BOUND UNDER SEPARATE COVER:
36-39; 194-201; 218-220; 234-235; 356-359

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Veritext National Deposition & Litigation Services
866 299-5127

EXHIBIT A

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1 UNITED STATES DISTRICT COURT
2 CENTRAL DISTRICT OF CALIFORNIA
3
4 FOURTH AGE LTD., et al.,)
5 Plaintiffs,) Case No. 12-9912-ABC (SHx)
6 vs.)
7 WARNER BROS. DIGITAL)
DISTRIBUTION, et al.,)
8 Defendants.)
_____)
9 WARNER BROS. DIGITAL)
DISTRUBUTION INC., et al.,)
10 Counterclaim)
Plaintiffs,)
11 vs.)
12 FOURTH AGE LTD., et al.,)
13 Counterclaim)
14 Defendants.)
_____)

15
16
17
18
19 Videotaped deposition of CATHLEEN
20 BLACKBURN, taken on behalf of the Defendants and
21 Counterclaim Plaintiffs at 1999 Avenue of the Stars,
22 Los Angeles, California, commencing at 9:04 a.m.,
23 Tuesday, December 10, 2013, before SHANDA GABRIEL,
24 CSR No. 10094.

25

Page 2

1 APPEARANCES:

2
3 FOR THE PLAINTIFFS AND COUNTERCLAIM DEFENDANTS:

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10 beskenazi@greenbergglusker.com

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12
13 FOR THE DEFENDANTS AND COUNTERCLAIM PLAINTIFFS

14 WARNER BROS. HOME ENTERTAINMENT, INC., WARNER BROS.

15 ENTERTAINMENT, INC., WARNER BROS. CONSUMER PRODUCTS,

16 INC., and NEW LINE PRODUCTIONS, INC.:

17 O'MELVENY & MYERS

18 BY: DANIEL PETROCELLI, ESQ.

19 MOLLY LENS, ESQ.

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21 Los Angeles, California 90067

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24 mlens@omm.com

25
Page 3

1 APPEARANCES (CONTINUED):

2

3 FOR THE DEFENDANT AND COUNTERCLAIM PLAINTIFF

4 THE SAUL ZAENTZ COMPANY:

5 ARNOLD & PORTER LLP

6 BY: JOHN C. ULIN, ESQ.

7 LAUREN S. MIYAMOTO, ESQ.

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10 (213) 243-4000

11 John.Ulin@aporter.com

12 Lauren.Miyamoto@aporter.com

13 - and -

14 ARNOLD & PORTER LLP

15 BY: MARTIN R. GLICK, ESQ.

16 Three Embarcadero Center, 7th Floor

17 San Francisco, California 94111-4024

18 (415) 471-3153

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20

21

22 ALSO PRESENT:

23 ROBYN MARTIN

24 JILL WARREN, VIDEOGRAPHER

25

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I N D E X

WITNESS	EXAMINATION	PAGE
CATHLEEN BLACKBURN	BY MR. ULIN	13
	BY MR. PETROCELLI	193

E X H I B I T S

NO.	DESCRIPTION	PAGE
Exhibit 1	Cathleen Blackburn's Curriculum Vitae	20
Exhibit 2	Letter dated 13 July 1992 to Laurie Battle from Cathleen Blackburn; 19 June 1992 letter to Mary from Cathleen Blackburn, Bates stamped SZC0049931 through 33	40
Exhibit 3	Letter dated 23 July 1993 to Laurie Battle from Cathleen Blackburn Bates stamped PLAINTIFFS015595 through 96	45
Exhibit 4	Table Bates stamped SZC0048135 through 38	47

I N D E X (CONTINUED)

E X H I B I T S

NO.	DESCRIPTION	PAGE
Exhibit 5	Letter dated 2 November 1993 to Albert M. Bendich from Cathleen Blackburn Bates stamped PLAINTIFFS029253 through 56	51
Exhibit 6	Letter dated May 16, 1996 to Adrian C. Laing from Malcolm Burnstein Bates stamped PLAINTIFFS007448 through 49	66
Exhibit 7	Letter dated 18 July 1996 to Malcolm Burnstein from Adrian Laing Bates stamped PLAINTIFFS014248 through 51	75
Exhibit 8	Letter dated October 2, 1997 to Cathleen Blackburn from Al Bendich Bates stamped PLAINTIFFS009344	82
Exhibit 9	Letter dated November 12, 1998 to Cathleen Blackburn from Laurie Battle, with enclosure, Bates stamped SZC0033357 through 73	86

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I N D E X (CONTINUED)

E X H I B I T S

NO.	DESCRIPTION	PAGE
Exhibit 10	Fax dated 16 November, 1998 to Laurie Battle from Cathleen Blackburn Bates stamped PLAINTIFFS007822 through 23	93
Exhibit 11	Fax dated 4 August, 2000 to Al Bendich from Cathleen Blackburn Bates stamped PLAINTIFFS029279 through 80	100
Exhibit 12	Document entitled "Tolkien Enterprises Active Merchandise Licensees List as of 4/26/01" Bates stamped PLAINTIFFS009396 through 97	107
Exhibit 13	E-mail string Bates stamped PLAINTIFFS011156 through 59	120
Exhibit 14	Fax dated 23 March, 1999 to A.M. Bendich from Cathleen Blackburn with enclosures Bates stamped SZC0037735 through 40	134

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I N D E X (CONTINUED)

E X H I B I T S

NO.	DESCRIPTION	PAGE
Exhibit 15	Fax dated 3 August, 2000 to Al Bendich from Cathleen Blackburn, with enclosures, Bates stamped SZC0001926 through 28	142
Exhibit 16	E-mail string Bates stamped PLAINTIFFS011044 through 48	146
Exhibit 17	Affidavit by Frank Richard Williamson Bates stamped PLAINTIFFS007324 through 25	155
Exhibit 17-A	Affidavit by Frank Richard Williamson Bates stamped SZC0001804	157
Exhibit 18	Document dated July 31, 1978 signed by Rayner S. Unwin, F.R. Williamson and Christopher Reuel Tolkien, Bates stamped PLAINTIFFS001410 through 17	162
Exhibit 19	E-mail string Bates stamped SZC0049234 through 35	169

I N D E X (CONTINUED)

E X H I B I T S

NO.	DESCRIPTION	PAGE
Exhibit 20	Letter dated 3 May, 2002 to A.M. Bendich from Cathleen Blackburn, with enclosures, Bates stamped SZC0033255 through 70	179
Exhibit 21	Article dated 11/16/2003 entitled "Lord of the Gold Ring"	334
Exhibit 22	Le Monde article entitled "My Father's Eviscerated Work: Son of Hobbit Scribe J.R.R. Tolkien Finally Speaks Out"	346

I N D E X (C O N T I N U E D)

U N A N S W E R E D Q U E S T I O N S

PAGE	LINE
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7 2	1 7
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3 6 2	3
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3 6 2	1 3
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3 6 2	2 3
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1 Los Angeles, California

2 Tuesday, December 10, 2013

3 9:04 a.m. 08:21:48

4 09:04:29

5 THE VIDEOGRAPHER: Good morning. We are on 09:04:29

6 the record at 9:05 a.m. on December 10, 2013. This 09:04:31

7 is the video recorded deposition of Cathleen 09:04:35

8 Blackburn. 09:04:39

9 My name is Jill Warren, here with our court 09:04:40

10 reporter, Shanda Gabriel. We are here from Veritext 09:04:43

11 Legal Solutions. This deposition is being held at 09:04:48

12 1999 Avenue of the Stars in Los Angeles, California. 09:04:50

13 The caption of this case is Fourth Age 09:04:55

14 Limited, et al., versus Warner Bros. Digital, et 09:05:00

15 al., and related counterclaim. Case number 09:05:02

16 12-9912-ABC (SHx), pending in the United States 09:05:11

17 District Court, Central District of California. 09:05:13

18 Please note that audio and video recording 09:05:16

19 will take place unless all parties agree to go off 09:05:18

20 the record. Microphones are sensitive and may pick 09:05:21

21 up whispers, private conversations and cellular 09:05:24

22 interference. 09:05:27

23 I am not related to any party in this 09:05:27

24 action, nor am I financially interested in the 09:05:30

25 outcome in any way. 09:05:32

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1 At this time, will counsel and all present 09:05:34
2 please identify themselves for the record. 09:05:38
3 MR. ULIN: My name is John Ulin from Arnold 09:05:41
4 & Porter for the Saul Zaentz Company. 09:05:44
5 MR. GLICK: Marty Glick from Arnold & 09:05:46
6 Porter for the Saul Zaentz Company. 09:05:48
7 MS. MIYAMOTO: Lauren -- Lauren Miyamoto 09:05:51
8 with Arnold & Porter for the Saul Zaentz Company. 09:05:51
9 MR. PETROCELLI: Daniel Petrocelli for the 09:05:55
10 Warner parties. 09:05:55
11 MS. LENS: Molly Lens for the Warner 09:05:57
12 parties. 09:05:58
13 MS. MARTIN: Robyn Martin from New Line 09:05:59
14 Cinema. 09:06:01
15 MS. MORIARTY: Elisabeth Moriarty, 09:06:01
16 Greenberg Glusker on behalf of plaintiffs and the 09:06:02
17 witness. 09:06:03
18 MS. ESKENAZI: Bonnie Eskenazi from 09:06:04
19 Greenberg Glusker on behalf of plaintiffs and the 09:06:06
20 witness. 09:06:07
21 THE WITNESS: Cathleen Blackburn. 09:06:09
22 THE VIDEOGRAPHER: Thank you. 09:06:11
23 The witness will be sworn in and counsel 09:06:13
24 may begin the examination. 09:06:15
25 ///

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1 CATHLEEN BLACKBURN,
2 having been first duly sworn, was
3 examined and testified as follows:
4

5 EXAMINATION

6 BY MR. ULIN:

7 Q. Good morning, Ms. Blackburn. 09:06:25

8 A. Good morning. 09:06:27

9 Q. My name is John Ulin. We met earlier. I'm 09:06:27
10 counsel for Saul Zaentz Company. 09:06:32

11 Do you understand that? 09:06:34

12 A. I do. 09:06:34

13 Q. And Mr. Marty Glick is with me representing 09:06:35
14 Saul Zaentz this morning. 09:06:39

15 A. Thank you. 09:06:40

16 Q. We will examine you for several hours today 09:06:40
17 and you will also be examined by Mr. Petrocelli from 09:06:42
18 O'Melveny & Myers for the Warner Bros. parties. 09:06:45

19 Do you understand that? 09:06:49

20 A. I do. 09:06:49

21 Q. You understand that you're under oath today 09:06:50
22 to tell the truth as you would be if you were 09:06:51
23 testifying in a court of law? 09:06:53

24 A. Yes, I do. 09:06:54

25 Q. And you've done a pretty good job with it 09:06:55

Page 13

1 so far. When I ask you questions, you're going to 09:07:00
2 need to answer my questions verbally, as opposed to 09:07:02
3 with a nod or an answer like "uh-huh," and that's 09:07:05
4 for the sake of the reporter who needs to transcribe 09:07:07
5 everything we say today. 09:07:09

6 Do you understand that? 09:07:10

7 A. I do. 09:07:11

8 Q. We also need to -- and we've done a good 09:07:11
9 job with this so far -- avoid talking over one 09:07:14
10 another, again, so that the reporter can take down 09:07:16
11 everything that's said. 09:07:19

12 Do you understand that? 09:07:20

13 A. Yes, I do. 09:07:20

14 Q. You're represented by counsel this morning? 09:07:21

15 A. Yes, I am. 09:07:23

16 Q. And that's Ms. Eskenazi? 09:07:24

17 A. That's correct. 09:07:25

18 Q. And Ms. Moriarty? 09:07:26

19 A. Yes. 09:07:27

20 Q. I want to go over briefly some ground rules 09:07:31
21 so that we under- -- both understand how the 09:07:35
22 procedure will go on today. 09:07:36

23 A. Thank you. 09:07:37

24 Q. It's a question-and-answer period. 09:07:38

25 Generally speaking, I ask questions and you answer. 09:07:40

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1 Do you understand that? 09:07:42

2 A. Yes. 09:07:43

3 Q. Okay. From time to time your counsel may 09:07:44

4 object to the form of a question that I ask. Unless 09:07:47

5 your counsel instructs you not to answer the 09:07:51

6 question, even if she objects, typically you should 09:07:53

7 still answer the question. 09:07:56

8 Do you understand that? 09:07:57

9 A. Yes, I do. 09:07:58

10 Q. If you don't understand one of my 09:07:58

11 questions, or you don't hear what I've said 09:08:03

12 completely, you can ask for the que- -- for me to 09:08:07

13 repeat the question or for the question to be read 09:08:09

14 back from the reporter so that you understand what's 09:08:10

15 being asked. 09:08:14

16 Do you understand that? 09:08:14

17 A. Yes. 09:08:14

18 Q. And if you don't ask for clarification or 09:08:17

19 for the question to be read back, I'm going to 09:08:20

20 understand that you understood the question and are 09:08:22

21 answering the question I asked. 09:08:24

22 Do you understand? 09:08:25

23 A. Yes, I do. 09:08:25

24 Q. We can take a break at any time you like. 09:08:26

25 You just need to let us know. 09:08:28

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1 Do you understand that? 09:08:30

2 A. Yes, I do. 09:08:31

3 Q. Okay. And some period of time, typically 09:08:33

4 in the range of ten days to two weeks or so after 09:08:35

5 this deposition is concluded, you will receive a 09:08:40

6 booklet that contains the transcription of 09:08:43

7 everything that's been said today. And you will 09:08:45

8 have an opportunity to review the testimony and make 09:08:47

9 any corrections that you think are necessary. 09:08:50

10 Do you understand that? 09:08:52

11 A. I do. 09:08:52

12 Q. Okay. If you correct the transcript, I and 09:08:54

13 any other counsel will have the opportunity to 09:08:57

14 comment on how those corrections may bear on your 09:09:00

15 credibility, whether your testimony should be 09:09:04

16 believed. 09:09:06

17 Do you understand that? 09:09:06

18 A. I do. 09:09:06

19 Q. So it behooves you to give your best and 09:09:07

20 most complete testimony here today. 09:09:09

21 Do you understand that? 09:09:11

22 A. I do. 09:09:11

23 Q. Have you ever given testimony in court 09:09:11

24 before? 09:09:16

25 A. No, I haven't. 09:09:16

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1 Q. Have you ever given testimony at a 09:09:18
2 deposition before? 09:09:19
3 A. No. 09:09:20
4 Q. Is there any reason why you cannot give 09:09:24
5 your best and most complete testimony here today? 09:09:27
6 A. No. 09:09:29
7 Q. Are you suffering any illness? 09:09:32
8 A. No. 09:09:33
9 Q. Have you drunk any alcohol within the last 09:09:34
10 24 hours? 09:09:36
11 A. Yes. 09:09:36
12 Q. Is that affecting your ability to testify 09:09:37
13 or to remember this morning? 09:09:39
14 A. No. 09:09:40
15 Q. Okay. Are you taking any drugs or 09:09:42
16 prescription medications that would impair your 09:09:44
17 memory or your ability to testify? 09:09:46
18 A. No. 09:09:47
19 Q. What have you done to prepare for this 09:09:51
20 deposition? 09:09:52
21 A. I met with counsel, Ms. Eskenazi and 09:09:53
22 Ms. Moriarty of Greenberg Glusker to understand the 09:09:56
23 deposition procedure and the sorts of questions 09:10:00
24 which might arise. 09:10:04
25 Q. And on how many occasions did you meet with 09:10:05

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1 Ms. Moriarty and Ms. Eskenazi? 09:10:07

2 A. Four occasions. 09:10:10

3 Q. And when were those? 09:10:13

4 A. I met with them for -- on Thursday, Friday, 09:10:15

5 Saturday, and yesterday. 09:10:21

6 Q. And how long was the Thursday session? 09:10:32

7 A. Three or four hours. 09:10:33

8 Q. And how long was the Friday session? 09:10:36

9 A. About the same. 09:10:40

10 Q. How about Saturday? 09:10:41

11 A. Two or three hours. 09:10:42

12 Q. And what about the session yesterday? 09:10:44

13 A. Four to five hours. 09:10:46

14 Q. Did you review documents with your counsel 09:10:48

15 in the course of your meetings to prepare for the 09:10:57

16 deposition today? 09:10:59

17 A. Yes. 09:10:59

18 Q. And did those documents refresh your 09:11:12

19 recollection on the subjects that counsel 09:11:14

20 anticipated being asked about? 09:11:18

21 MS. ESKENAZI: Objection. Vague and 09:11:22

22 ambiguous. 09:11:23

23 You can answer. 09:11:24

24 THE WITNESS: Some of the documents I 09:11:25

25 reviewed refreshed my general rec- -- recollection 09:11:30

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1 of certain aspects of the history of the Tolkien 09:11:34
2 Estate's relationships with the Saul Zaentz Company 09:11:38
3 and also New Line Cinema/Warner Bros. 09:11:40
4 BY MR. ULIN: 09:11:40
5 Q. Do you know whether the documents that you 09:11:51
6 reviewed with counsel have been produced in 09:11:52
7 discovery in this case? 09:11:54
8 A. Some of they -- they often had numbers in 09:11:55
9 the bottom right-hand corner. I think that 09:12:00
10 signifies production. 09:12:02
11 Q. Are you aware of any documents that you 09:12:04
12 reviewed with counsel that have not been produced in 09:12:05
13 discovery in this case? 09:12:08
14 MS. ESKENAZI: Objection. Attorney-client 09:12:10
15 privilege. 09:12:11
16 If you can answer that question without 09:12:15
17 revealing any privilege. 09:12:17
18 THE WITNESS: Could you repeat that 09:12:20
19 question, please? 09:12:21
20 BY MR. ULIN: 09:12:21
21 Q. Yes. 09:12:23
22 Are you aware of any documents that you 09:12:24
23 reviewed with counsel that have not been produced in 09:12:25
24 discovery in this case? 09:12:27
25 A. I think I can answer it this way: I 09:12:27

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1 think -- I think I did also review privileged 09:12:33
2 documents. 09:12:35
3 Q. Okay. And did any of those privileged 09:12:40
4 documents refresh your recollection? 09:12:51
5 A. In a general sense. 09:12:53
6 Q. I want to ask a few questions about your 09:12:57
7 background. 09:13:13
8 Let's mark Exhibit 1 to the deposition. 09:13:17
9 (The document referred to was 09:13:34
10 marked for identification as 09:13:34
11 Exhibit 1 and attached to this 09:13:34
12 deposition.) 09:13:35
13 THE REPORTER: Do you want the witness to 09:13:35
14 have the marked copy? 09:13:35
15 MR. ULIN: It doesn't matter. 09:13:35
16 Q. Ms. Blackburn, have you seen Exhibit 1 09:13:36
17 before? 09:13:38
18 A. Yes, I have. 09:13:38
19 Q. And is this a copy of your curriculum vitae 09:13:39
20 from the Blackburn Maier Web site? 09:13:41
21 A. Yes. I've been given two copies, actually. 09:13:44
22 Q. Thank you. 09:13:44
23 A. Yes, it is. 09:13:52
24 Q. And -- 09:13:52
25 A. Well, it looks like it is. 09:13:53

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1 Q. Very good. 09:13:55

2 Does this CV accurately reflect your 09:13:55

3 educational background? 09:14:00

4 A. It's -- there are elements that are not on 09:14:01

5 there relating to my educational background, for 09:14:08

6 example, where I went to school before I was at 09:14:11

7 secondary school and it -- it doesn't actually refer 09:14:13

8 to my legal training. 09:14:17

9 Q. Okay. And I'll come back to that. 09:14:21

10 Does this CV accurately refle- -- reflect 09:14:23

11 your professional history? 09:14:27

12 A. In -- in broad outline in terms of the 09:14:29

13 firms at which I worked. 09:14:34

14 Q. Do you have academic training in law? 09:14:38

15 A. Yes, I do. 09:14:42

16 Q. And where did you study law? 09:14:43

17 A. I studied at the College of Law in 09:14:45

18 Lancaster Gate in London. 09:14:47

19 Q. And do you have a degree from that school? 09:14:49

20 A. I have -- trying to remember the name of 09:14:51

21 it. I think it's called a Certificate of 09:14:55

22 Professional Education. And then I have a -- 09:14:59

23 something called the Law Society final examination. 09:15:04

24 Q. And when did you study at the College of 09:15:08

25 Law in Lancaster Gate? 09:15:10

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1 A. For two years. 1982 to 1984. 09:15:12

2 Q. Then is it correct that your first job as a 09:15:22

3 lawyer was at Linklaters? 09:15:27

4 A. Yes, I started as a trainee at Linklaters. 09:15:28

5 Q. Okay. And at Linklaters you were in 09:15:32

6 commercial litigation; is that correct? 09:15:35

7 A. Well, when I was training I was in a number 09:15:37

8 of different departments, and when I qualified, I 09:15:39

9 went into the commercial litigation department. 09:15:41

10 Q. And did your work there involve copyright 09:15:43

11 or trademark litigation matters? 09:15:45

12 A. Not until the later stages. It was mainly 09:15:46

13 capital markets work that we -- we did there. 09:15:51

14 Q. Did you work on any matters relating to the 09:15:54

15 Tolkien Estate or the works of J.R.R. Tolkien while 09:16:01

16 you were at Linklaters? 09:16:05

17 A. No. 09:16:07

18 Q. In 1989 it appears you moved to Morrell 09:16:07

19 Peel & Gamlen; is that correct? 09:16:12

20 A. That's correct. 09:16:12

21 Q. Okay. And why did you decide to join 09:16:13

22 Morrell Peel? 09:16:15

23 A. I didn't really enjoy working in a great 09:16:16

24 big city of London firm. And I found my work was 09:16:20

25 becoming quite lim- -- limited, a limited range of 09:16:24

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1 cases and not much client contact. 09:16:29

2 Q. And at Morrell Peel is it correct that 09:16:32

3 you -- let me start that question again. 09:16:36

4 Is it correct that it was at Morrell Peel 09:16:37

5 that you began working on Tolkien Estate matters? 09:16:39

6 A. That's correct. 09:16:42

7 Q. Okay. When did you first begin working on 09:16:43

8 Tolkien Estate matters? 09:16:46

9 A. I think in 1990. 09:16:47

10 Q. And what was the earliest Tolkien Estate 09:16:48

11 matter that you began working on? 09:16:55

12 A. I can't be precise about this, but in 1990 09:16:57

13 I worked on -- well, I dealt with aspects of the 09:17:05

14 fact that our then publishers, the Tolkien Estate's 09:17:11

15 then publishers were acquired by HarperCollins. 09:17:15

16 Q. And at that time were you supporting the 09:17:19

17 work of Richard Williamson? 09:17:33

18 A. Dick Williamson. 09:17:35

19 Q. Fair enough. 09:17:37

20 A. I assisted him, yes. 09:17:37

21 Q. And is it correct that he was the partner 09:17:41

22 in charge of Tolkien Estate matters at Morrell Peel? 09:17:42

23 A. That's correct. 09:17:47

24 Q. Were there other lawyers who worked with 09:17:47

25 you supporting Mr. Williamson? 09:17:49

Page 23

1 MS. ESKENAZI: Objection. Vague and 09:17:53
2 ambiguous. 09:17:53
3 THE WITNESS: Not really as I -- as I think 09:18:03
4 about it today. 09:18:10
5 BY MR. ULIN: 09:18:10
6 Q. And was that -- now just focusing entirely 09:18:11
7 on the period of time when you worked with 09:18:14
8 Mr. Williamson at Morrell Peel between 1990 and 09:18:17
9 1997 -- 09:18:20
10 A. Yes. 09:18:22
11 Q. -- were you and he the only two lawyers who 09:18:22
12 worked on Tolkien Estate matters at Morrell Peel 09:18:25
13 during that period? 09:18:28
14 A. I think it would depend on the work, but 09:18:29
15 occasionally other people might -- might assist, but 09:18:31
16 I can't rec- -- I can't recollect any names. 09:18:34
17 Q. At some point during your tenure at Morrell 09:18:36
18 Peel you became the partner with principal 09:18:46
19 responsibility -- 09:18:48
20 A. I did. 09:18:48
21 Q. -- for Tolkien Estate matters? 09:18:49
22 A. Yes, I did. 09:18:50
23 Q. Okay. And when was that? 09:18:51
24 A. 1992. 09:18:52
25 Q. And that was upon the retirement of Dick 09:18:54

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1 Williamson? 09:18:56

2 A. Mr. Williamson retired as a partner in 09:18:56

3 1992, but remained as a consultant to the firm. 09:19:00

4 Q. How long did he remain as a consultant -- 09:19:07

5 A. Until 1997. 09:19:09

6 Q. -- to the firm? 09:19:10

7 MS. ESKENAZI: I just want to remind the 09:19:10

8 witness to wait until Mr. Ulin has finished his 09:19:12

9 questions before you start answering because there's 09:19:15

10 a little bit of overlap. 09:19:17

11 MR. ULIN: Thank you. 09:19:19

12 THE WITNESS: Sorry. 09:19:20

13 BY MR. ULIN: 09:19:20

14 Q. And during the period between '92 and '97 09:19:26

15 when Mr. Williamson stayed on as a consultant, did 09:19:33

16 he continue to work on Tolkien Estate matters? 09:19:37

17 A. Yes, he did. 09:19:39

18 Q. And continued to work with you on those? 09:19:40

19 A. Yes. 09:19:41

20 Q. Okay. In 1997, you left Morrell Peel for 09:19:48

21 Manches? 09:19:48

22 A. Well -- 09:19:48

23 Q. Please. 09:19:57

24 A. Is that the end of the question? 09:19:57

25 Q. It can be. 09:19:58

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1 A. The firm of Morrell Peel & Gamlen merged 09:20:01
2 with Manches in 1997. It was -- it wasn't just me 09:20:03
3 who left and started at a new place. 09:20:10
4 Q. And did Mr. Williamson continue at Manches 09:20:12
5 after the merger? 09:20:15
6 A. No, he didn't. 09:20:18
7 Q. Did he continue to be involved in your work 09:20:18
8 on Tolkien Estate matters after the Manches merger? 09:20:24
9 A. No, he didn't. 09:20:28
10 Q. Did you continue to consult with 09:20:29
11 Mr. Williamson on Tolkien Estate matters after the 09:20:31
12 Manches merger? 09:20:34
13 A. No. Not really. 09:20:35
14 Q. So is it fair to say from your testimony 09:20:37
15 that after the -- after 1997 Mr. Williamson was no 09:20:42
16 longer involved in Tolkien Estate matters? 09:20:46
17 A. That's correct. 09:20:48
18 Q. During the period when you were at Manches 09:20:49
19 from 1997 to 2011, were you the partner in charge of 09:21:00
20 Tolkien Estate matters for that entire time? 09:21:04
21 A. Yes, I was. 09:21:06
22 Q. And who were the lawyers that worked with 09:21:06
23 you on Tolkien Estate matters? 09:21:08
24 A. There were -- at intervals I involved two 09:21:16
25 or three assistants. I remember Edward Humphreys 09:21:26

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1 helped me at one time. A lawyer called Catherine 09:21:36
2 Rohll. 09:21:45
3 Q. Can you spell that? 09:21:45
4 A. Yes, R-o-h-l-l, helped me. 09:21:45
5 Was the question directed at the entire 09:21:50
6 period? 09:21:56
7 Q. Yes. 09:21:57
8 A. Right. And at some point Steven Maier 09:21:57
9 began to help me with Tolkien matters. 09:22:03
10 Q. Other than Mr. Humphreys, Ms. Rohll and 09:22:07
11 Mr. Maier, were there other attorneys at Manches who 09:22:10
12 assisted you on Tolkien Estate matters? 09:22:13
13 A. There may have been an assistant or two who 09:22:16
14 would do the pieces of research for me. But I don't 09:22:18
15 think they had any client relationship as such. 09:22:23
16 I -- I'm just saying that because I think that may 09:22:27
17 have happened, but I can't remember any specific 09:22:29
18 names. 09:22:32
19 Q. During what time period did Mr. Humphreys 09:22:38
20 help you with Tolkien Estate matters? 09:22:40
21 A. I don't specifically recall. 09:22:51
22 Q. What matters did he assist you with? 09:22:52
23 A. I don't specifically recall. 09:22:56
24 Q. What about Ms. Rohll? What matters did she 09:23:05
25 assist you with? 09:23:07

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1 A. Again, I couldn't be specific. 09:23:08

2 Q. Okay. And I will come back to Mr. Maier. 09:23:10

3 Actually, let me just take that for a 09:23:18

4 moment. 09:23:20

5 So when did -- when did Mr. Maier first 09:23:20

6 begin working on Tolkien Estate matters? 09:23:22

7 A. I'm not sure. Some- -- sometime -- 09:23:24

8 sometime around about The Lord of the Rings films 09:23:32

9 being out there, released. 09:23:36

10 Q. Early 2000s? 09:23:38

11 A. Probably. 09:23:40

12 Q. And what has -- what matters has Mr. Maier 09:23:47

13 worked on related to the Tolkien Estate? 09:23:49

14 A. He would mainly look after lit- -- 09:23:50

15 disputes, litigation enforcement. He's -- he's a 09:23:55

16 contentious lawyer. 09:24:03

17 Q. Like so many in this room. 09:24:04

18 I realize that takes on a different meaning 09:24:05

19 in the English system. 09:24:08

20 A. It is different. Somebody once said to me 09:24:09

21 all lawyers are contentious. 09:24:16

22 Q. It's probably true. 09:24:17

23 And then at the beginning of 2012, you and 09:24:18

24 Mr. Maier left Manches to form your own firm; is 09:24:24

25 that correct? 09:24:24

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1 A. We did. 09:24:29

2 Q. And you took the Tolkien Estate work with 09:24:30

3 you, correct? 09:24:32

4 A. They followed us. 09:24:33

5 Q. And is it correct that you remain the 09:24:33

6 partner in charge of Tolkien Estate matters today? 09:24:35

7 A. Yes, it is. 09:24:38

8 Q. Okay. Are there attorneys at Maier 09:24:42

9 Blackburn who assist you with Tolkien Estate 09:24:44

10 matters? 09:24:46

11 A. Just Steven Maier. 09:24:46

12 Q. Are there attorneys at Maier -- I'm sorry, 09:24:47

13 Maier Blackburn other than yourself and Mr. Maier? 09:24:52

14 A. No. 09:24:55

15 Q. Does Manches still do any work for the 09:24:58

16 Tolkien Estate? 09:25:02

17 A. Yes. 09:25:05

18 Q. And what does Manches do for the Tolkien 09:25:05

19 Estate currently? 09:25:07

20 A. They assist with trademark registrations. 09:25:08

21 They also do corporate work, when there's a need for 09:25:11

22 corporate work. 09:25:18

23 Q. At the final page, page 3 of your 09:25:24

24 curriculum vitae, you describe managing the business 09:25:29

25 of a well-known literary estate across its worldwide 09:25:33

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1 operations. 09:25:36

2 Do you see that? 09:25:36

3 A. Yes, I do. 09:25:36

4 Q. Does that refer to your work for the 09:25:37

5 Tolkien Estate? 09:25:39

6 A. Yes, it does. 09:25:40

7 Q. And does the bullet point summary on page 3 09:25:40

8 of your CV fairly describe the types of work you do 09:25:46

9 for the Estate? 09:25:49

10 MS. ESKENAZI: Objection. Vague and 09:25:52

11 ambiguous. 09:25:54

12 You can answer. 09:25:54

13 THE WITNESS: This is a general summary. I 09:26:04

14 wouldn't say it was comprehensive, but it's 09:26:08

15 representative of the work that I do. 09:26:11

16 BY MR. ULIN: 09:26:11

17 Q. The second bullet describes managing and 09:26:13

18 licensing an extensive worldwide trademark 09:26:15

19 portfolio. 09:26:20

20 Do you see that? 09:26:21

21 A. Yes, I do. 09:26:21

22 Q. What do you do to manage the Estate's 09:26:22

23 worldwide trademark portfolio? 09:26:24

24 A. I consider what marks to register, where 09:26:25

25 and in what classes. Those sorts of issues. And 09:26:32

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1 downstream of that, licensing people to use them or 09:26:38
2 preventing people from using them where the Tolkien 09:26:45
3 Estate wishes that they shouldn't be used. 09:26:49
4 Q. And is it important for you in that context 09:26:51
5 to know what Tolkien-related trademarks are 09:26:58
6 registered worldwide? 09:27:02
7 MS. ESKENAZI: Objection. Vague and 09:27:03
8 ambiguous. 09:27:06
9 THE WITNESS: Could you ask the question 09:27:06
10 again? 09:27:06
11 BY MR. ULIN: 09:27:06
12 Q. Sure. Is it important for you in that 09:27:07
13 context to know what Tolkien-related trademarks are 09:27:08
14 registered worldwide? 09:27:13
15 A. I think -- 09:27:14
16 MS. ESKENAZI: Same objections. 09:27:15
17 THE WITNESS: I think the term 09:27:15
18 "Tolkien-related trademarks" is very vague. 09:27:17
19 BY MR. ULIN: 09:27:17
20 Q. Okay. Are you conversant with the 09:27:20
21 trademarks that are registered by the Tolkien 09:27:24
22 Estate? 09:27:27
23 MS. ESKENAZI: Objection. Vague and 09:27:27
24 ambiguous. 09:27:32
25 THE WITNESS: Well, I look after the 09:27:32

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1 portfolio. I couldn't today give you a list of what 09:27:34
2 marks the Tolkien Estate has registered and where. 09:27:41
3 But I have an understanding of what that activity 09:27:45
4 covers. 09:27:48
5 BY MR. ULIN: 09:27:48
6 Q. Do you review regular reports of the marks 09:27:49
7 that are registered by the Tolkien Estate? 09:27:51
8 MS. ESKENAZI: Objection. Vague and 09:27:54
9 ambiguous. 09:27:56
10 THE WITNESS: I'm aware of what is 09:27:56
11 registered and what the state of any applications 09:28:00
12 for registration are. 09:28:04
13 BY MR. ULIN: 09:28:04
14 Q. Do you also review reports of the marks 09:28:06
15 registered by the Saul Zaentz Company? 09:28:10
16 A. No. 09:28:12
17 MS. ESKENAZI: Objection. Vague and 09:28:13
18 ambiguous. 09:28:14
19 BY MR. ULIN: 09:28:14
20 Q. Okay. Is there someone who reviews the 09:28:14
21 marks registered by the Saul Zaentz Company on 09:28:27
22 behalf of the Estate? 09:28:29
23 MS. ESKENAZI: Objection. Vague and 09:28:33
24 ambiguous. 09:28:35
25 THE WITNESS: What do you mean by 09:28:35

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1 "reviews"? 09:28:36

2 BY MR. ULIN: 09:28:36

3 Q. The question I'm asking goes to whether 09:28:39

4 someone reviews reports of the registered marks for 09:28:42

5 purposes of knowing what marks have been registered 09:28:44

6 by the Saul Zaentz Company? 09:28:46

7 MS. ESKENAZI: Same objection. 09:28:49

8 THE WITNESS: We don't review reports of 09:28:51

9 such matters. 09:28:54

10 BY MR. ULIN: 09:28:54

11 Q. Okay. Are you familiar with what marks are 09:28:56

12 registered by the Saul Zaentz Company? 09:29:02

13 A. Not in specific terms. 09:29:04

14 Q. And is there someone from the Estate who is 09:29:23

15 responsible for reviewing what uses the Saul Zaentz 09:29:25

16 Company has licensed of Tolkien-related trademarks? 09:29:31

17 MS. ESKENAZI: Objection. Vague and 09:29:34

18 ambiguous. 09:29:39

19 THE WITNESS: Nobody at the Tolkien Estate 09:29:39

20 has detailed knowledge of how and what the Saul 09:29:41

21 Zaentz Company licenses in terms of Tolkien 09:29:46

22 trademarks, Tolkien-related trademarks. 09:29:49

23 BY MR. ULIN: 09:29:49

24 Q. And just to clarify, when you say "nobody 09:29:51

25 at the Tolkien Estate," you include outside counsel? 09:29:53

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1 MS. ESKENAZI: Objection. Vague and 09:29:56
2 ambiguous. 09:30:02
3 THE WITNESS: If you're asking whether I'm 09:30:02
4 encompassing my own activity or lack of it, 09:30:03
5 that's -- it -- it covers that, too. 09:30:06
6 BY MR. ULIN: 09:30:06
7 Q. Fair enough. 09:30:08
8 Do you have any formal position within the 09:30:08
9 Tolkien Estate? 09:30:12
10 A. Yes, I do. The Tolkien Estate essentially 09:30:13
11 now consists of two elements. There's a private 09:30:19
12 limited company and there's another that's called 09:30:24
13 the Tolkien Estate Limited. 09:30:27
14 Q. And what is the other element? 09:30:32
15 A. Just to explain to you, the Tolkien Estate 09:30:34
16 Limited is the same as Fourth Age Limited. It 09:30:40
17 simply changed its name. 09:30:42
18 Q. And when did that occur? 09:30:48
19 A. Oh, gosh. I believe that was at the 09:30:48
20 beginning of this year. 09:30:55
21 Q. And what is the other element of the 09:30:59
22 Tolkien Estate? 09:31:04
23 A. The other element is a charitable company 09:31:04
24 called the Tolkien Trust. 09:31:07
25 Q. Okay. And I believe your answer was a 09:31:13

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1 preface to telling us what your formal role within 09:31:14

2 the Estate is. 09:31:17

3 A. I am -- I am company secretary of each of 09:31:18

4 those companies. 09:31:20

5 Q. And for how long have you served as company 09:31:24

6 secretary of the Tolkien Estate Limited and Tolkien 09:31:35

7 Trust? 09:31:39

8 A. Since inception in each of those cases. 09:31:39

9 (Pages 36 through 39 are

10 marked confidential and are bound

11 under separate cover. The

12 nonconfidential portion of this

13 transcript continues on page 40.)

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1 Q. Is HarperCollins your client? 09:32:48
2 A. No. 09:32:50
3 Q. Have they ever been your client? 09:32:51
4 A. No. 09:32:53
5 MR. ULIN: I'm going to mark Exhibit 2. 09:33:08
6 (The document referred to was 09:33:10
7 marked for identification as 09:33:10
8 Exhibit 2 and attached to this 09:33:10
9 deposition.) 09:33:22
10 THE WITNESS: Can I put this aside? 09:33:25
11 BY MR. ULIN: 09:33:25
12 Q. Yes, you may put the CV aside. Sorry. 09:33:27
13 Good question. 09:33:29
14 MS. ESKENAZI: Are -- are -- but -- but 09:33:31
15 you're not giving the witness the actual exhibits? 09:33:31
16 MR. ULIN: I haven't. I've left them with 09:33:33
17 the reporter. 09:33:36
18 MS. ESKENAZI: Okay. I only say that 09:33:36
19 because it may become confusing later if you go back 09:33:38
20 to exhibits that have not been numbered. I just 09:33:40
21 noticed that the witness is not numbering these. 09:33:44
22 MR. ULIN: That's a -- that's a fair point 09:33:46
23 so why don't we -- yeah, let's -- let's change 09:33:47
24 course and give the witness the marked exhibits. 09:33:49
25 That's a good point. 09:33:51

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1 MS. ESKENAZI: So do you want to take -- 09:33:57
2 take the marked exhibits. 09:33:57
3 MR. ULIN: I had the helpful notion that it 09:33:58
4 would keep the marked exhibits in the hands of the 09:34:00
5 reporter, which is always a good thing. 09:34:03
6 Q. Ms. Blackburn, have you seen Exhibit 2 09:34:14
7 before? 09:34:16
8 A. Almost certainly. 09:34:16
9 Q. Okay. And do you recognize this as a 09:34:24
10 letter that you sent to Laurie Battle? 09:34:25
11 A. The first page is a letter sent to Laurie 09:34:29
12 Battle. 09:34:35
13 Q. With -- with an attachment? 09:34:36
14 A. I just need to read it to see if anything 09:34:37
15 is attached. 09:34:40
16 Q. And I'm only going to be focusing on the 09:34:47
17 first page. 09:34:49
18 A. Do you want me to read this in detail? 09:35:11
19 Q. No, we won't -- we won't be focusing -- no, 09:35:13
20 we won't be focusing on the attachments, so it's not 09:35:15
21 necessary. 09:35:18
22 In -- Ms. Battle was a contact of yours at 09:35:18
23 Saul Zaentz; is that correct? 09:35:23
24 A. Well, at that point, I don't know -- this 09:35:26
25 might have been the first occasion I had any 09:35:29

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1 dealings with Laurie. It might well be because it 09:35:31
2 was often my practice to write, "if I may," if I 09:35:37
3 didn't know somebody, if I say, "Dear Laurie, if I 09:35:40
4 may." 09:35:43

5 Q. Fair enough. So the purpose of this letter 09:35:45
6 is to introduce yourself as the -- the partner 09:35:47
7 taking over responsibility for Tolkien Estate work; 09:35:53
8 is that correct? 09:35:53

9 A. Yes. Well, the bulk of our work for the 09:35:59
10 Tolkien Estate. This is talking about the future. 09:36:01

11 Q. Uh-huh. 09:36:05

12 A. And it may be. I'm anticipating in the 09:36:09
13 first paragraph that Dick Williamson may already 09:36:11
14 have introduced me. 09:36:13

15 Q. When you took over the bulk of the Tolkien 09:36:15
16 Estate work on Mr. Williamson's retirement, did you 09:36:23
17 review his files in preparation for making that 09:36:26
18 transition? 09:36:29

19 A. Not in preparation. I -- when -- when 09:36:29
20 he -- when he retired in 1992, I started the task of 09:36:36
21 reviewing files at that stage. 09:36:41

22 Q. And do you still have Mr. Williamson's 09:36:43
23 files? 09:36:51

24 A. Yes. 09:36:51

25 Q. Are they at Maier -- Maier Blackburn with 09:36:54

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1	you?	09:36:58
2	A. Yes, they -- well, they're in storage.	09:36:58
3	There wouldn't be enough room for all of them at	09:37:03
4	Maier Blackburn.	09:37:06
5	Q. I note in this letter that you write:	09:37:13
6	"One of the jobs which has	09:37:15
7	already fallen to me to deal with	09:37:16
8	is that of computer games."	09:37:18
9	Do you see that?	09:37:21
10	A. Yes.	09:37:21
11	Q. And is it correct that review of computer	09:37:23
12	game licensing was one of the first tasks you took	09:37:25
13	on when you became the relationship partner on	09:37:28
14	Tolkien Estate matters?	09:37:31
15	MS. ESKENAZI: Objection. Vague and	09:37:34
16	ambiguous.	09:37:35
17	THE WITNESS: No, because this is in 1992.	09:37:36
18	I think this is -- this is an aspect of work	09:37:39
19	involving the Saul Zaentz Company, but I had done	09:37:43
20	other work related -- for the Tolkien Estate before	09:37:46
21	that.	09:37:50
22	BY MR. ULIN:	09:37:50
23	Q. Okay. Related to computer games?	09:37:51
24	A. I doubt it. No, I wouldn't have thought	09:37:53
25	so.	09:37:58

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1 Q. All right. Okay. You began a dialogue 09:37:59
2 shortly afterward with the Saul Zaentz Company 09:38:27
3 related to a company called Beam, also known as 09:38:31
4 Melbourne House. 09:38:37
5 Do you recall that? 09:38:39
6 MS. ESKENAZI: Objection. Vague and 09:38:39
7 ambiguous. 09:38:40
8 THE WITNESS: I recall the name of that 09:38:40
9 company. 09:38:42
10 BY MR. ULIN: 09:38:42
11 Q. Okay. And do you recall a dialogue with 09:38:44
12 the Saul Zaentz Company about licensing of compu 09:38:52
13 novels? 09:38:56
14 A. In a historical sense, because that had 09:38:57
15 already happened. Compu novels had -- were -- were 09:39:02
16 a thing of the 1980s, I believe. 09:39:05
17 Q. And how did compu novels operate, to your 09:39:10
18 understanding? 09:39:16
19 MS. ESKENAZI: Objection. Vague and 09:39:16
20 ambiguous. 09:39:17
21 THE WITNESS: I -- I -- I can't answer 09:39:17
22 that. I -- I never saw one of the products. 09:39:19
23 MR. ULIN: Okay. Let's -- sorry. Move to 09:39:29
24 the next document. Let's mark Exhibit 3. 09:39:30
25 MS. ESKENAZI: May I have a copy? 09:40:14

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1 MR. ULIN: Yes, you certainly may. 09:40:15

2 MS. ESKENAZI: Thank you. 09:40:16

3 (The document referred to was 09:40:29

4 marked for identification as 09:40:29

5 Exhibit 3 and attached to this 09:40:29

6 deposition.) 09:40:30

7 BY MR. ULIN: 09:40:30

8 Q. Ms. Blackburn, have you seen Exhibit 3 09:40:30

9 before? 09:40:32

10 A. This looks like a letter I wrote to Laurie 09:40:37

11 Battle which I signed, so, yes. 09:40:41

12 Q. And is it correct that you're responding to 09:40:51

13 an inquiry from Ms. Battle about new games from Beam 09:40:56

14 or Melbourne House? 09:41:00

15 MS. ESKENAZI: If you're going to ask the 09:41:03

16 witness to answer substantive questions about the 09:41:05

17 document, I would ask that she actually read it. 09:41:07

18 THE WITNESS: Would you like me to read it? 09:41:11

19 BY MR. ULIN: 09:41:11

20 Q. Yes, although I am concerned about how much 09:41:18

21 time is necessary. But you may take time to -- 09:41:20

22 A. I think I would have to read this. This is 09:41:23

23 a document from 20 years ago. 09:41:25

24 Q. Okay. 09:41:25

25 A. I've read it. 09:42:24

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1 Q. Okay. Is -- is the attachment with this -- 09:42:24
2 the letter? 09:42:35
3 THE WITNESS: I haven't got the attachment. 09:42:35
4 MR. ULIN: Do we have the letter with the 09:42:35
5 attachment? 09:42:35
6 Q. Okay. All right. At the first paragraph 09:43:16
7 of the letter, you indicate that you've enclosed a 09:43:17
8 table setting out the history of the licensing of 09:43:21
9 computer games based on the Tolkien works. 09:43:25
10 Do you see that? 09:43:27
11 A. I do. 09:43:27
12 Q. Is it your recollection that you sent 09:43:27
13 Ms. Battle a table of the history of the Tolkien 09:43:29
14 works-related computer game licensing in the summer 09:43:34
15 of 1993? 09:43:37
16 A. My recollection is that I sent her a table 09:43:43
17 setting out the history of the licensing of computer 09:43:45
18 games based on Tolkien works. 09:43:48
19 MR. ULIN: I only have one copy of this. 09:43:50
20 I'm going to mark it and then I'll allow you to 09:43:52
21 share it with the witness. I apologize for that. I 09:43:55
22 thought I had copies of the attachment, but I don't. 09:43:55
23 Can we mark this as Exhibit 4, please. 09:43:57
24 (The document referred to was 09:43:59
25 marked for identification as 09:43:59

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1 Exhibit 4 and attached to this 09:43:59
2 deposition.) 09:44:34
3 BY MR. ULIN: 09:44:34
4 Q. And Ms. Blackburn, does this appear to be 09:44:35
5 the table that you sent to Ms. Battle in the summer 09:44:36
6 of 1993? 09:44:38
7 A. I think it is, yes. 09:44:39
8 Q. That was attached to the letter which is 09:44:49
9 marked Exhibit -- as Exhibit 3? 09:44:51
10 A. It was an enclosure to the letter. 09:44:54
11 Q. Why did you provide a table of the history 09:45:00
12 of computer game licensing to Ms. Battle at that 09:45:02
13 time? 09:45:08
14 A. From memory, in early 1993 as part of the 09:45:08
15 process of my taking over from Dick Williamson, we 09:45:16
16 met with representatives of the Saul Zaentz Company 09:45:21
17 in Berkeley. Did I say the date? In early -- 09:45:26
18 Q. Early 1993. 09:45:30
19 A. -- early 1993. 09:45:32
20 And one of the points which arose at that 09:45:35
21 meeting was the licensing of computer games. 09:45:38
22 Specifically, the question that had arisen was 09:45:42
23 whether the nature of computer games was different 09:45:46
24 then to what it had been when it was agreed that 09:45:51
25 George Allen and Unwin would license them. 09:45:54

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1 THE REPORTER: "George Allen and"? 09:45:54

2 THE WITNESS: Unwin, U-n-w-i-n. 09:45:57

3 BY MR. ULIN: 09:46:10

4 Q. Okay. And who was present at the meeting 09:46:10

5 in Berkeley with Saul Zaentz representatives in 09:46:13

6 early 1993 that you just referred to? 09:46:17

7 A. I think it was me, Dick Williamson, and Al 09:46:19

8 Bendich. 09:46:28

9 Q. Just the three of you? 09:46:28

10 A. Yes. But while I was there, I was 09:46:29

11 introduced to Laurie Battle. 09:46:33

12 Q. Okay. And you referred to a discussion 09:46:52

13 about whether the nature of computer games was 09:46:54

14 different at that time from what it had been when it 09:46:56

15 was agreed that the publishing company of the 09:46:59

16 Tolkien works would handle them. 09:47:07

17 Can you elaborate on that discussion? 09:47:09

18 MS. ESKENAZI: Objection. Vague and 09:47:12

19 ambiguous. 09:47:13

20 THE WITNESS: In the 1980s, when the first 09:47:14

21 things that people called computer games came about, 09:47:21

22 the parties considered what their status was in 09:47:26

23 relation to the merchandising agreement which had 09:47:30

24 been put in place in 1969. 09:47:35

25 In that agreement, the predecessor in 09:47:40

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1 interest of the Saul Zaentz Company had the right to 09:47:46
2 license articles of tangible personal property. But 09:47:50
3 there was an exception in effect, a reservation of 09:47:55
4 rights for articles of tangible personal property, 09:47:59
5 which -- which consisted of books or printed 09:48:05
6 published materials, so effectively text. And the 09:48:08
7 analysis of the 1980s was that games at that time 09:48:13
8 were essentially text-based. 09:48:19

9 BY MR. ULIN: 09:48:22

10 Q. And when you say "games," you mean computer 09:48:22
11 games? 09:48:24

12 A. Yes, I do. Well, this was the phrase used 09:48:24
13 at the time, "compu novel." 09:48:28

14 Q. Okay. And your discussion with Mr. Bendich 09:48:39
15 surrounded whether the nature of computer games had 09:48:43
16 changed by the early 1990s; is that correct? 09:48:46

17 A. One of the points Mr. Bendich made was that 09:48:48
18 the text-based nature of computer games was no 09:48:51
19 longer applicable. He argued that they were 09:48:55
20 becoming more graphics-based. 09:48:59

21 Q. And that as a result they should be -- the 09:49:06
22 graphics-based computer games should be licensed by 09:49:08
23 Saul Zaentz as opposed to by the Tolkien works 09:49:11
24 publisher? 09:49:16

25 A. Correct. 09:49:16

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1 Q. And what was the response from you or 09:49:16

2 Mr. Williamson? 09:49:24

3 A. At the meeting, we listened to what 09:49:25

4 Mr. Bendich said and agreed to go back and 09:49:28

5 investigate, really, his -- his contention. We 09:49:35

6 had -- we had to consult with HarperCollins -- yes, 09:49:41

7 it was HarperCollins at that time. We had to 09:49:44

8 consult with HarperCollins over the question because 09:49:46

9 they were doing the licensing. 09:49:51

10 Q. And did you consult with HarperCollins? 09:50:13

11 A. Almost certainly. Though I don't have any 09:50:14

12 specific recollection. 09:50:17

13 Q. Don't recall who you would have -- who you 09:50:18

14 consulted with at HarperCollins on the subject -- 09:50:26

15 A. The person -- the person involved there was 09:50:28

16 a lady called Mary Butler. 09:50:30

17 Q. And then subsequently you had further 09:50:34

18 conversations and correspondence with Saul Zaentz on 09:50:46

19 the subject of the changing nature of video games? 09:50:49

20 A. I don't know what -- what the nature of 09:50:53

21 that correspondence was. Clearly we have an example 09:50:57

22 of an item of correspondence. I don't recall what 09:51:01

23 form that interaction took, how many letters at this 09:51:05

24 distance in time. 09:51:11

25 Q. Okay. At the end of Exhibit 3, the letter 09:51:24

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1 to which you attached the chart of previous video 09:51:27
2 game or computer game licenses -- 09:51:31
3 A. Uh-huh. 09:51:33
4 Q. -- you indicate that you will be in contact 09:51:34
5 with Ms. Battle on the subject of rights in two 09:51:39
6 games that you were reviewing. 09:51:43
7 Do you see that? 09:51:46
8 A. I see I'm trying to get hold of some games 09:51:46
9 to see what they are like. And after that I 09:51:57
10 anticipate being in contact with her. 09:52:01
11 MR. ULIN: Okay. Let's mark Exhibit 5. 09:52:04
12 (The document referred to was 09:52:05
13 marked for identification as 09:52:05
14 Exhibit 5 and attached to this 09:52:05
15 deposition.) 09:52:30
16 MR. PETROCELLI: Bonnie, can I have that 09:52:30
17 chart so I can get copies made for everybody. 09:52:32
18 THE WITNESS: Sorry, you want this back? 09:52:34
19 MR. ULIN: Yes. 09:52:34
20 MR. PETROCELLI: Yes. 09:53:12
21 THE WITNESS: Do you want me to read this 09:53:12
22 letter? 09:53:13
23 BY MR. ULIN: 09:53:13
24 Q. Is this -- well, let me ask you one 09:53:14
25 question: Is this letter one of the documents that 09:53:16

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1 you reviewed with counsel in preparing for this 09:53:18
2 deposition? 09:53:21
3 A. I don't recollect doing so. 09:53:21
4 Q. Okay. I can direct you to portions of the 09:53:29
5 letter that I want to focus on. 09:53:32
6 First of all, this appears to be a letter 09:53:34
7 that you sent to Al Bendich on or about November the 09:53:38
8 2nd, 1993. 09:53:43
9 A. Yes. 09:53:44
10 Q. And -- 09:53:45
11 A. Can -- can I -- I have -- I have seen this 09:53:50
12 document recently. 09:53:53
13 Q. Okay. And is it correct that this letter 09:53:59
14 discusses the rights in licensing of two games 09:54:02
15 issued around that time by Melbourne House, which 09:54:10
16 then called itself Beam, entitled "The Lord of the 09:54:13
17 Rings, Volume 1" and "The Two Towers"? 09:54:17
18 MS. ESKENAZI: If -- again, if you're going 09:54:19
19 to ask the witness to answer substantive questions 09:54:21
20 about this document, can you give her a chance to 09:54:24
21 read it? 09:54:26
22 MR. ULIN: I can, but again, just in the 09:54:27
23 interest of time I'm hopeful that I can direct her 09:54:29
24 to relevant portions of the document. 09:54:31
25 MS. ESKENAZI: I totally understand. It's 09:54:32

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1 just that if you want -- if you're asking for her 09:54:34
2 most accurate recollection, she should read it. 09:54:37
3 MR. ULIN: Yes, is the answer to that. 09:54:42
4 Ms. Blackburn, you can just let me know 09:55:21
5 when you're ready. 09:55:23
6 THE WITNESS: Okay. 09:55:25
7 MR. PETROCELLI: Is this Exhibit 5? 09:55:36
8 MR. ULIN: Yes. 09:55:37
9 THE WITNESS: It is. 09:55:37
10 MR. PETROCELLI: With or without 09:55:47
11 attachments? I'm sorry. Did it include or not 09:55:48
12 include the attachments? 09:55:55
13 MS. ESKENAZI: We don't have an 09:55:56
14 attachment -- 09:55:57
15 MR. ULIN: No, we do not. 09:55:57
16 MS. ESKENAZI: -- on what's been handed to 09:55:59
17 us. 09:56:00
18 MR. PETROCELLI: Okay. For the record, I 09:56:01
19 was referring to the March 15, 1984 agreement and 09:56:11
20 the February 9, 1984 letter. In the third paragraph 09:56:13
21 it says they are attached. 09:56:16
22 MR. ULIN: And I'm not sure I have a copy 09:56:21
23 of this letter with those documents attached to it. 09:56:23
24 I have those documents, but I'm not sure I have them 09:56:25
25 as attachments to this letter. 09:56:26

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1 THE WITNESS: I've -- I've reviewed the 09:56:32
2 document briefly. 09:56:33
3 BY MR. ULIN: 09:56:33
4 Q. Okay. And this is a letter you sent to 09:56:37
5 Mr. Bendich about the Estate's position concerning 09:56:42
6 rights in two new games by Beam; is that correct? 09:56:45
7 A. Well, I'm -- it's broader than that. 09:56:52
8 I'm -- I'm surveying not just the specific instance 09:56:54
9 of what to do with Melbourne House/Beam, but the 09:56:59
10 generality of the licensing of computer games. 09:57:03
11 Q. Okay. You indicate at the third paragraph 09:57:08
12 of this letter that the starting point in this area 09:57:11
13 is the 15 March 1984 agreement between the Estate 09:57:15
14 and the Saul Zaentz Company and the correspondence 09:57:21
15 between Mr. Bendich and Dick Williamson which 09:57:24
16 preceded it, notably including a letter of the 9th 09:57:28
17 of February, 1984. 09:57:33
18 Do you see that? 09:57:34
19 A. I see that. 09:57:35
20 Q. Okay. Can you explain what you mean by 09:57:38
21 that? 09:57:40
22 MS. ESKENAZI: Objection. Vague and 09:57:42
23 ambiguous. Also, objection, relevance. 09:57:45
24 THE WITNESS: I'm referring to 09:57:52
25 correspondence at which the question of computer 09:57:53

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1 games was debated and some agreement reached back in 09:57:57
2 1984. 09:58:04
3 BY MR. ULIN: 09:58:04
4 Q. And you refer at the second page of the 09:58:18
5 letter in the second full paragraph, the one that 09:58:23
6 begins, "Following our approach," that the question 09:58:32
7 to be addressed in determining who should properly 09:58:36
8 be licensing video games is, "whether new games are 09:58:40
9 still other writings using the printed word 09:58:46
10 primarily, or whether, as suggested by the 1975 09:58:50
11 agreement and referred to in Dick's February 1984 09:58:53
12 letter, they used the printed word only incidentally 09:58:56
13 and fall on your side of the line." 09:58:59
14 Do you see that? 09:59:01
15 A. I see this paragraph. 09:59:02
16 Q. Okay. Can you explain that distinction and 09:59:03
17 how it affected the position you were taking with 09:59:06
18 respect to computer game rights? 09:59:10
19 MS. ESKENAZI: Objection. Vague and 09:59:11
20 ambiguous. Objection. Relevance. 09:59:19
21 THE WITNESS: What I'm alluding to here is 09:59:20
22 the analysis of who should license computer games by 09:59:22
23 reference to the 1969 merchandising agreement. 09:59:29
24 BY MR. ULIN: 09:59:29
25 Q. Okay. And what is the -- you draw a 09:59:36

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1 distinction in this paragraph between who should 09:59:38
2 license computer games. 09:59:42
3 Can you explain that distinction? 09:59:43
4 A. Yes. There are -- in the analysis of this 09:59:45
5 question, there were two elements, and still are two 09:59:49
6 elements. 09:59:52
7 The first requirement of the merchandising 09:59:53
8 agreement for the rights of the Saul Zaentz Company 09:59:56
9 to be engaged at all is that there be the 10:00:01
10 manufacture of an article of tangible personal 10:00:04
11 property. If there isn't an article of tangible 10:00:07
12 personal property, the merchandising agreement is 10:00:12
13 not engaged. 10:00:14
14 But if there is such an article of tangible 10:00:17
15 personal property, the next question is to analyze 10:00:21
16 whether, notwithstanding its nature, it falls within 10:00:25
17 the reservation of rights in that agreement to the 10:00:30
18 Tolkien Estate. 10:00:36
19 And from memory, the reservation is 10:00:39
20 expressed as articles of tangible -- excluding 10:00:44
21 books, but including paperbacks and other printed 10:00:54
22 published material. There's an exception which we 10:00:59
23 have always in shorthand referred to as the -- an 10:01:03
24 exception for text-based articles. 10:01:09
25 Q. So if I understand you correctly, if 10:01:18

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1 computer games were principally text-based, then 10:01:21
2 your position is that they should be licensed by 10:01:24
3 HarperCollins or the publisher; is that correct? 10:01:27
4 MS. ESKENAZI: Objection. Misstates the 10:01:29
5 testimony. Vague and ambiguous. 10:01:34
6 THE WITNESS: The analysis at the time was 10:01:34
7 that if there was a computer game which constituted 10:01:36
8 an article of tangible personal property and its 10:01:41
9 nature was text-based, I'm -- I'm paraphrasing, then 10:01:44
10 it -- it did not fall to the Saul Zaentz Company to 10:01:50
11 license that. The rights that they had under the 10:01:53
12 merchandising agreement simply weren't engaged. 10:01:56
13 BY MR. ULIN: 10:02:00
14 Q. And if there was a computer game that was 10:02:00
15 principally graphics-based as to which text was 10:02:02
16 incidental, then the licensing of that game did fall 10:02:06
17 to the Saul Zaentz Company; is that correct? 10:02:08
18 MS. ESKENAZI: Objection. Misstates the 10:02:10
19 testimony. 10:02:11
20 THE WITNESS: Well, first of all, your 10:02:12
21 computer game has to be an article of tangible 10:02:13
22 personal property. 10:02:16
23 BY MR. ULIN: 10:02:16
24 Q. Okay. 10:02:20
25 A. Then if it -- if it didn't fall within the 10:02:20

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1 text-based exception very clearly, one would have to 10:02:25
2 further analyze the situation and look at the 10:02:31
3 amendment to the merchandising agreement which was 10:02:35
4 entered into in 1975. It was a complex analysis. 10:02:38
5 Q. Your conclusion with respect to the games 10:02:57
6 that you are writing about in this letter at the 10:02:59
7 fourth full paragraph is -- 10:03:07
8 A. Page -- page 2? 10:03:10
9 Q. Yes, I'm sorry, of page 2, is that the new 10:03:11
10 games continue to rely very heavily on words and, 10:03:13
11 therefore, are principally text-based; is that 10:03:18
12 correct? 10:03:18
13 A. Well, I indicate that the question isn't -- 10:03:30
14 isn't susceptible to a straightforward answer. That 10:03:32
15 they still -- they always had a graphic element, but 10:03:37
16 the nature of the graphic element now is it's -- 10:03:41
17 it's -- it's moving. But I argue that that's a 10:03:43
18 change of form rather than substance. 10:03:50
19 Q. Okay. But you acknowledge at the bottom of 10:03:57
20 page 2 that the new games are not word-based to the 10:03:59
21 same extent as prior games, compu novels issued by 10:04:06
22 Beam, correct? 10:04:11
23 A. Well, I just refer to the new games and the 10:04:15
24 old games. 10:04:20
25 Q. Okay. 10:04:22

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1	A. So I'm not specific.	10:04:22
2	Q. But leaving aside whether this -- whether	10:04:25
3	you're specific as to what the old games were, you	10:04:26
4	acknowledge that the new games are not word-based to	10:04:29
5	the same extent as -- as you described them, old	10:04:33
6	computer games?	10:04:38
7	A. Well, what I say is that it's arguable that	10:04:39
8	the new games are not produced to the same formula	10:04:43
9	and so fall into a contractual vacuum.	10:04:47
10	Q. And do I understand it correctly that your	10:04:53
11	suggestion is that as games become more	10:04:55
12	graphics-based, they are more likely to be ones that	10:04:57
13	should be licensed by the Saul Zaentz Company?	10:04:59
14	MS. ESKENAZI: Objection. Vague and	10:05:01
15	ambiguous. Misstates the testimony.	10:05:02
16	THE WITNESS: I don't think --	10:05:03
17	MS. ESKENAZI: Misstates the document.	10:05:04
18	THE WITNESS: Sorry.	10:05:05
19	MS. ESKENAZI: You can answer.	10:05:06
20	THE WITNESS: I don't think I'm suggesting	10:05:07
21	that.	10:05:08
22	Excuse me. Is it possible for somebody	10:05:16
23	just to get me a bit -- a glass of water? I don't	10:05:17
24	wish to take a break especially.	10:05:21
25	MR. ULIN: That's all right. We're	10:05:22

1	probably going to take a break in about five	10:05:24
2	minutes, but you can get water right now if you	10:05:26
3	want. That's fine.	10:05:27
4	THE WITNESS: Oh, no, no, no. I'll wait.	10:05:27
5	That's fine.	10:05:31
6	MS. MORIARTY: I can get you water.	10:05:31
7	BY MR. ULIN:	10:05:31
8	Q. Do you recall the -- the Beam games, The	10:05:32
9	Lord of the Rings, Volume 1, and The Hobbit?	10:05:36
10	A. I don't.	10:05:37
11	Q. Do you recall whether they were based on	10:05:38
12	any movie?	10:05:40
13	A. I'm pretty sure they weren't based on any	10:05:46
14	movie.	10:05:50
15	Q. They were not?	10:05:50
16	A. But -- but I -- I noticed in that letter,	10:05:51
17	that correspondence with Laurie Battle, that there	10:05:56
18	was something about a film, they wanted to use a	10:06:00
19	film clip.	10:06:03
20	Thank you very much.	10:06:04
21	Q. But to your --	10:06:04
22	A. But the games -- the games existed. This	10:06:07
23	was -- I think they wanted to add a piece of film to	10:06:10
24	that -- that -- the new game or something.	10:06:14
25	Q. But to your knowledge, the games you were	10:06:16

1 looking at in connection with the letter that's 10:06:17
2 marked as Exhibit 5 were not based on any movie, 10:06:20
3 correct? 10:06:20
4 MS. ESKENAZI: Objection. Calls for 10:06:25
5 speculation. Lacks foundation. 10:06:26
6 THE WITNESS: I act- -- I act- -- sorry, 10:06:26
7 Bonnie. 10:06:28
8 I actually don't know. 10:06:29
9 BY MR. ULIN: 10:06:29
10 Q. Okay. Do you know if they used footage or 10:06:31
11 images or artwork from any movie? 10:06:32
12 MS. ESKENAZI: Objection. Asked and 10:06:35
13 answered. Calls for speculation. Lacks foundation. 10:06:36
14 THE WITNESS: I don't know. 10:06:41
15 BY MR. ULIN: 10:06:41
16 Q. Okay. 10:06:41
17 A. It's perhaps more accurate to say I don't 10:06:46
18 recollect, because I have no recollection of that 10:06:49
19 analysis. 10:06:52
20 Q. Okay. Did Zae- -- did you have any 10:06:53
21 discussions with Mr. Bendich or anyone else at 10:06:57
22 Zaentz about -- apart from this letter -- about 10:07:02
23 whether the new Beam games should be licensed by the 10:07:09
24 Saul Zaentz Company? 10:07:14
25 A. I don't recall what surrounded this letter, 10:07:14

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1 what interaction surrounded this letter. 10:07:18

2 Q. Okay. Did the Zaentz company agree with 10:07:22

3 your position that the new Beam games, Lord of the 10:07:24

4 Rings and The Two -- and the -- sorry. Let me start 10:07:27

5 that question again. 10:07:31

6 Did the Zaentz company agree with the 10:07:32

7 position taken in your letter that's marked as 10:07:35

8 Exhibit 5 that the new Beam game should be licensed 10:07:37

9 by HarperCollins? 10:07:39

10 MS. ESKENAZI: Objection. Vague and 10:07:42

11 ambiguous. Calls for speculation. Lacks 10:07:43

12 foundation. 10:07:43

13 THE WITNESS: I don't know whether they 10:07:43

14 actually responded to my proposals here. I think it 10:07:47

15 was a situation in which over a period of time there 10:07:55

16 was no response, and one assumed from that that they 10:08:03

17 weren't interested in the proposals. 10:08:08

18 MR. ULIN: At this point, we've been going 10:08:12

19 for an hour. I'd like to take a break for about 10:08:14

20 five minutes to revise some notes. Why don't we do 10:08:17

21 that. 10:08:19

22 THE VIDEOGRAPHER: This is the end of media 10:08:19

23 number 1. Off the record at 10:09 a.m. 10:08:21

24 (Brief recess.) 10:24:55

25 THE VIDEOGRAPHER: We are back on the 10:26:43

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1 record at 10:29 a.m. This is the beginning of media 10:27:59
2 number 2. Counsel may proceed. 10:28:04
3 BY MR. ULIN: 10:28:04
4 Q. Ms. Blackburn, before we broke we were 10:28:09
5 talking about your letter to Mr. Bendich of 10:28:11
6 November the 2nd, 1993 which is -- Mr. Bendich of 10:28:15
7 November the 2nd, 1993, which is marked as 10:28:21
8 Exhibit 5. 10:28:24
9 And you indicated when we discussed how to 10:28:27
10 determine whether the Saul Zaentz Company would have 10:28:36
11 rights to license computer games that there was a 10:28:40
12 two-step analysis. 10:28:42
13 Do you recall that? 10:28:43
14 A. Yes. 10:28:43
15 Q. Okay. And as you said, one -- the first 10:28:45
16 step of the -- of the analysis dealt with whether 10:28:50
17 the computer game constituted an article of tangible 10:28:54
18 personal property; is that correct? 10:28:57
19 A. Correct. 10:28:58
20 Q. And the second step of the analysis dealt 10:28:59
21 with a distinction between games that are mostly 10:29:01
22 text-based and games that are mostly graphics-based? 10:29:04
23 A. No, that's not strictly correct. 10:29:06
24 Q. Okay. 10:29:06
25 A. As I said -- as I believe I said, the first 10:29:13

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1 element was to establish whether one was dealing 10:29:15
2 with an article of tangible personal property. 10:29:17
3 Q. May I pause you there? 10:29:19
4 A. Uh-huh. 10:29:21
5 Q. Is that in your letter? 10:29:21
6 A. Is it in this letter? 10:29:22
7 Q. Right. 10:29:23
8 A. I don't think it is, actually. It's -- but 10:29:31
9 it's -- that -- that would be the purpose of 10:29:34
10 referencing the earlier documents in my -- to my 10:29:35
11 recollection. In other words, that first element of 10:29:39
12 the test was implicit by the stage of writing this 10:29:43
13 letter. 10:29:46
14 Q. Implicit in the sense that you -- 10:29:47
15 A. Both parties would understand that that was 10:29:50
16 the starting point. We wouldn't be having the 10:29:52
17 discussion if that weren't already understood. 10:29:55
18 Q. Your understanding -- just to make sure 10:29:59
19 I -- I get your testimony, your understanding, as 10:30:02
20 you're drafting this letter in November of 1993, is 10:30:07
21 that the video games in question are articles of 10:30:09
22 tangible personal property; is that correct? 10:30:11
23 A. When I was writing this letter, the 10:30:23
24 starting point was that the computer games of the 10:30:25
25 time constituted articles of tangible personal 10:30:28

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1 property. 10:30:32

2 Q. Okay. But you don't articulate that in the 10:30:33

3 letter, right? 10:30:34

4 A. No. 10:30:35

5 Q. Or articulate that that is an element of 10:30:36

6 the analysis, right? 10:30:41

7 A. I don't seem to -- I -- 10:30:41

8 MS. ESKENAZI: Objection. Vague and 10:30:42

9 ambiguous. And asked and answered. 10:30:43

10 THE WITNESS: I think it's implicit. 10:30:45

11 BY MR. ULIN: 10:30:45

12 Q. Okay. But if it's implicit, it's not 10:30:51

13 articulated in this letter; is that correct? 10:30:53

14 A. Well, I haven't got these -- the agreement 10:30:55

15 in the letter. If to the extent I'm incorporating 10:31:01

16 those in this letter, I may in fact be expressing 10:31:06

17 the principal, if it wasn't expressed in those 10:31:09

18 letters. 10:31:14

19 In this letter itself I don't, I think, 10:31:14

20 refer to that first element of the test. 10:31:16

21 Q. Okay. 10:31:16

22 And I want to go to one before it also. I 10:31:40

23 want to take both of them. These two. 10:31:43

24 So let's mark Exhibit 6 to the deposition. 10:31:54

25 I'm sorry.

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1 (The document referred to was
2 marked for identification as
3 Exhibit 6 and attached to this
4 deposition.)

5 THE WITNESS: Thank you.

6 MR. ULIN: Yeah, that's going to be 7.

7 MS. ESKENAZI: Oh, is there a 7? 10:32:49

8 MR. ULIN: Not yet. 10:32:50

9 MS. ESKENAZI: Oh. It's like who's on 10:32:51
10 first. 10:32:52

11 BY MR. ULIN: 10:32:52

12 Q. Ms. Blackburn, have you seen the letter 10:33:02
13 that has been marked as Exhibit 6 before? 10:33:04

14 A. Yes, I have. 10:33:09

15 Q. And you recognize this as a letter from 10:33:11
16 Malcolm Burnstein to Adrian Laing at HarperCollins? 10:33:16

17 A. Yes. 10:33:23

18 Q. And this letter is dated on May the 16th, 10:33:23
19 1996; is that correct? 10:33:26

20 A. Correct. 10:33:27

21 Q. And you were copied on this letter, 10:33:28
22 correct? 10:33:28

23 A. Yes. 10:33:28

24 Q. Did you receive this letter in or around 10:33:32
25 1996? 10:33:34

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1 A. I don't know when I received it, but I did 10:33:36
2 receive it. 10:33:38
3 Q. Okay. You recall receiving this letter? 10:33:39
4 A. Yes. 10:33:40
5 Q. And you read it when you received it? 10:33:42
6 A. Yes. 10:33:42
7 Q. And Mr. Burnstein was counsel for the Saul 10:33:44
8 Zaentz Company; is that correct? 10:33:52
9 A. I don't know. 10:33:53
10 Q. Do you know who Mr. Burnstein is? 10:33:53
11 A. I've heard his name before. 10:33:56
12 Q. Okay. And the first line of the letter 10:34:00
13 indicates from Mr. Burnstein: 10:34:03
14 "I have been retained by the Saul 10:34:05
15 Zaentz Company (doing business as 10:34:10
16 Tolkien Enterprises) in connection 10:34:11
17 with the licensing of merchandising 10:34:13
18 rights to the Tolkien properties." 10:34:14
19 Do you see that? 10:34:17
20 A. I see the first sentence of the letter. 10:34:17
21 Q. Does that refresh your recollection that 10:34:20
22 Mr. Burnstein was counsel for the Saul Zaentz 10:34:22
23 Company? 10:34:25
24 MS. ESKENAZI: Objection. Calls for 10:34:25
25 speculation. Lacks foundation. 10:34:27

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1 BY MR. ULIN: 10:34:27

2 Q. You may answer. 10:34:28

3 A. My knowledge of Mr. Burnstein is that he 10:34:29

4 occasionally became involved in questions that 10:34:32

5 related to the Saul Zaentz Company and the Tolkien 10:34:36

6 Estate. That's how I know his name. I don't 10:34:39

7 know -- I don't know anything about his specific 10:34:42

8 relationship. 10:34:45

9 Q. And when you say "he became involved," did 10:34:46

10 he -- did he become involved on the Saul Zaentz 10:34:49

11 side? 10:34:51

12 A. Yes. 10:34:51

13 Q. Okay. And -- sorry. Is it your 10:34:58

14 understanding that this letter refers to 10:35:59

15 HarperCollins' rights to continue licensing the 10:36:04

16 games that were the subject of your letter to 10:36:07

17 Mr. Bendich in 1993? 10:36:10

18 MS. ESKENAZI: Objection. Document speaks 10:36:12

19 for itself. Calls for speculation. Lacks 10:36:14

20 foundation. 10:36:17

21 THE WITNESS: I haven't -- I haven't read 10:36:17

22 the letter. Do you want me to read it? 10:36:19

23 BY MR. ULIN: 10:36:19

24 Q. Yes. 10:36:19

25 A. I've read the letter. 10:37:37

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1 Q. Okay. And is it your understanding that 10:37:40
2 this letter relates to the question of who has the 10:37:41
3 rights to license the games you were writing with 10:37:44
4 Mr. Bendich about in 1993? 10:37:48

5 MS. ESKENAZI: Objection. Vague and 10:37:50
6 ambiguous. Calls for speculation. Lacks 10:37:51
7 foundation. 10:37:56

8 THE WITNESS: I think Mr. Burnstein writes 10:37:56
9 very broadly here about -- he talks about games, 10:37:58
10 including computer games. So it's -- it's -- as I 10:38:01
11 read this letter, it's -- it's very broaden. It 10:38:05
12 goes -- it goes wider than what we were talking 10:38:10
13 about with Al Bendich. 10:38:14

14 BY MR. ULIN: 10:38:14

15 Q. Okay. But it would incorporate those games 10:38:17
16 within the scope of what it's addressing? 10:38:18

17 MS. ESKENAZI: Same objections. Calls for 10:38:20
18 speculation. Lacks foundation. 10:38:22

19 THE WITNESS: What I would say about this 10:38:24
20 letter is it -- it -- it doesn't really encompass 10:38:25
21 our discussions with the Saul Zaentz Company on 10:38:31
22 computer games at this point. It seems to take a -- 10:38:35
23 a different approach. 10:38:40

24 BY MR. ULIN: 10:38:40

25 Q. Okay. Mr. Burnstein writes at the bottom 10:38:45

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1 of the first page carrying over onto the top of the 10:38:49
2 second page that he wants to make clear on behalf of 10:38:55
3 the Saul Zaentz Company "in the strongest possible 10:38:58
4 terms, that HarperCollins has no right to any 10:39:01
5 computer games as defined below." 10:39:05
6 Do you see that? 10:39:07
7 A. Sorry, where did you direct me? 10:39:07
8 Q. Bottom of page 1 to the top of page 2. 10:39:11
9 A. "We want to make it clear" -- sorry. Could 10:39:17
10 you repeat your question? 10:39:20
11 Q. The question is only that Mr. Burnstein 10:39:23
12 writes that Saul Zaentz wants to make clear that 10:39:25
13 HarperCollins has no right to any computer games as 10:39:27
14 defined below. 10:39:31
15 Do you see that? 10:39:32
16 A. Yes. 10:39:32
17 MS. ESKENAZI: Objection. Document speaks 10:39:33
18 for itself. 10:39:34
19 BY MR. ULIN: 10:39:34
20 Q. And in the next paragraph, he draws the 10:39:36
21 distinction between two types of computer games. 10:39:40
22 Do you see that? 10:39:45
23 A. I see what he says in the first full 10:39:45
24 paragraph on page 2. 10:39:59
25 Q. Okay. And he indicates there that any 10:40:01

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1 computer or online game that uses graphics rather 10:40:03
2 than words as its primary tool is ipso facto the 10:40:07
3 property of Tolkien Enterprises. 10:40:11
4 Do you see that? 10:40:15
5 A. I see that he says that. 10:40:15
6 Q. Okay. Did you respond to Mr. Burnstein's 10:40:16
7 letter? 10:40:22
8 A. I don't believe I responded personally. I 10:40:25
9 would have discussed this letter with Adrian Laing. 10:40:28
10 HarperCollins and the Tolkien Estate are joint 10:40:35
11 owners of the residual rights. That's to say they 10:40:37
12 are the licensors of the Saul Zaentz Company. 10:40:44
13 So in any discussions such as this, I 10:40:46
14 would -- we would have to coordinate our response 10:40:52
15 and, specifically, our legal analysis. 10:40:57
16 Q. Do you recall a conversation with Mr. Laing 10:40:59
17 or anybody at HarperCollins around this time in 10:41:01
18 response to Mr. Burnstein's letter? 10:41:04
19 A. I don't -- 10:41:05
20 MS. ESKENAZI: I'm going to advise the -- 10:41:06
21 I'm going to let the witness answer this one 10:41:09
22 question, but to the extent that it starts getting 10:41:11
23 into attorney-client privileged information I'm 10:41:18
24 going to instruct her not to answer. But she can 10:41:20
25 answer that one question. 10:41:23

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1 MR. ULIN: Let's address that when -- 10:41:25

2 MS. ESKENAZI: Fair enough. 10:41:25

3 MR. ULIN: -- the time comes. 10:41:26

4 THE WITNESS: I've forgotten what the 10:41:27

5 question is. 10:41:29

6 BY MR. ULIN: 10:41:29

7 Q. Do you recall any conversations with 10:41:30

8 Mr. Laing or anybody at HarperCollins about 10:41:30

9 Mr. Burnstein's letter at or around this time, May 10:41:32

10 of 1996? 10:41:34

11 MS. ESKENAZI: That is a "yes" or "no" 10:41:36

12 question. 10:41:37

13 THE WITNESS: I don't recall the specifics 10:41:41

14 of the conversation. But I believe I would have had 10:41:50

15 conversations or correspondence. 10:41:54

16 BY MR. ULIN: 10:41:54

17 Q. Did you discuss with Mr. Laing or anybody 10:41:56

18 at HarperCollins the assertion by Zaentz that any 10:42:00

19 online game that uses graphics was the property of 10:42:05

20 the Saul Zaentz Company or Tolkien Enterprises? 10:42:14

21 MS. ESKENAZI: Objection. Attorney-client 10:42:18

22 privilege. Instruct the witness not to answer. 10:42:19

23 BY MR. ULIN: 10:42:19

24 Q. Are you accepting your counsel's 10:42:23

25 instruction? 10:42:24

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1	A. I am.	10:42:24
2	MR. ULIN: She -- she has testified that	10:42:26
3	she does not represent the -- HarperCollins or the	10:42:31
4	HarperCollins parties. What's the basis for the	10:42:37
5	assertion that it's attorney-client privilege?	10:42:39
6	MS. ESKENAZI: She's also testified as	10:42:41
7	joint owners, they came to legal conclusions	10:42:43
8	together, so she just explained that to you. And on	10:42:45
9	that basis, we're -- there's a joint attorney-client	10:42:49
10	privilege assertion.	10:42:54
11	BY MR. ULIN:	10:42:54
12	Q. Did HarperCollins and the Estate have a	10:43:24
13	written common interest agreement in 1996?	10:43:27
14	MS. ESKENAZI: Objection. Vague and	10:43:31
15	ambiguous.	10:43:33
16	THE WITNESS: What is a written -- what is	10:43:33
17	a common interest agreement?	10:43:36
18	BY MR. ULIN:	10:43:37
19	Q. Was there an agreement between	10:43:37
20	HarperCollins and the Estate that communications	10:43:38
21	between them relating to the licensing of -- excuse	10:43:42
22	me -- Tolkien works or trademarks would be	10:43:48
23	privileged?	10:43:51
24	MS. ESKENAZI: Objection. It's vague and	10:43:53
25	ambiguous.	10:43:53

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1 BY MR. ULIN: 10:43:53

2 Q. You may answer. 10:44:04

3 MS. ESKENAZI: If you understand the 10:44:06

4 question, you may answer. 10:44:06

5 THE WITNESS: I -- I don't understand the 10:44:07

6 question. Not -- that's not a -- that's not the 10:44:08

7 sort of document I've come across before. 10:44:12

8 BY MR. ULIN: 10:44:12

9 Q. Okay. So as you sit here today, you can't 10:44:15

10 recall a written agreement with HarperCollins in 10:44:16

11 around 1996 that communications between you and 10:44:19

12 representatives of HarperCollins would remain 10:44:21

13 privileged; is that correct? 10:44:23

14 MS. ESKENAZI: Objection. Vague and 10:44:25

15 ambiguous. 10:44:25

16 You can answer if you understand the 10:44:31

17 question. 10:44:32

18 THE WITNESS: I don't think there was a 10:44:37

19 written agreement to that effect, but the parties 10:44:38

20 acted together in legal matters to deal with these 10:44:43

21 jointly-held rights. 10:44:47

22 When you asked me earlier if -- if 10:44:51

23 HarperCollins was my client, I understood you to 10:44:55

24 mean had -- had -- had they hired my firm. The 10:44:58

25 answer is they hadn't hired my firm, hence my 10:45:04

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1 answer. But we worked absolutely together over any 10:45:07
2 legal issues to do with the 1969 agreements and we 10:45:14
3 still do. 10:45:17
4 MR. PETROCELLI: Move to strike everything 10:45:20
5 after the words "agreement to that effect" as 10:45:22
6 nonresponsive to the question. 10:45:23
7 MS. ESKENAZI: Well -- 10:45:29
8 BY MR. ULIN: 10:45:29
9 Q. Did -- did you respond to Mr. Burnstein's 10:45:29
10 assertion that online games that use graphics rather 10:45:36
11 than words as their primary tool are the property of 10:45:45
12 Tolkien Enterprises? 10:45:49
13 MS. ESKENAZI: Objection. It's vague and 10:45:49
14 ambiguous. 10:45:52
15 THE WITNESS: I don't believe I responded 10:45:52
16 to Mr. Burnstein. 10:45:54
17 MR. ULIN: Put Exhibit 7 before the 10:46:08
18 witness. 10:46:10
19 (The document referred to was 10:46:10
20 marked for identification as 10:46:10
21 Exhibit 7 and attached to this 10:46:10
22 deposition.) 10:46:28
23 MS. ESKENAZI: May I have a copy of 10:46:28
24 Exhibit 7? 10:46:29
25 MR. ULIN: Yes, you certainly may. We find 10:46:29

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1 it more amusing to keep you in the dark, actually. 10:46:31

2 THE WITNESS: Do you want me to read this 10:47:16

3 letter? 10:47:17

4 BY MR. ULIN: 10:47:17

5 Q. Sure, yes. I can tell you that my 10:47:18

6 questions are going to be directed to the first 10:47:20

7 paragraph. I think that's it. 10:47:24

8 A. Okay. 10:47:24

9 Q. Ms. Blackburn, have you seen Exhibit 7? 10:48:35

10 MS. ESKENAZI: I'm sorry, have you read the 10:48:37

11 entire document? 10:48:38

12 THE WITNESS: I've looked at the -- I've 10:48:38

13 looked at what I think I need to look at. 10:48:44

14 MS. ESKENAZI: Okay. 10:48:46

15 BY MR. ULIN: 10:48:46

16 Q. Ms. Blackburn, have you seen Exhibit -- 10:48:47

17 Exhibit 7 before? 10:48:48

18 A. Yes. 10:48:49

19 Q. Do you recognize this as a letter from 10:48:51

20 Mr. Laing to Mr. Burnstein dated July 18, 1996? 10:48:54

21 A. 18 July 1996, yes. 10:49:02

22 Q. And you were copied on this letter, 10:49:06

23 correct? 10:49:06

24 A. Correct. 10:49:11

25 Q. Do you recall receiving this letter around 10:49:12

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1 the 18th of July 1996? 10:49:14

2 A. Yes. 10:49:16

3 Q. And this letter refers in paragraph 1 in 10:49:21

4 the first full sentence to games produced in the 10:49:27

5 United States by Interplay Productions under license 10:49:35

6 from Beam International of Australia. 10:49:38

7 Do you see that? 10:49:43

8 A. It says there, "games produced by the U.S. 10:49:43

9 company." It doesn't deal with the geographical 10:49:45

10 ambit. 10:49:49

11 Q. Fair enough. 10:49:50

12 A. But -- but I've read the sentence. 10:49:51

13 Q. And those are the same games that you and 10:49:53

14 Mr. Bendich corresponded about in 1993; isn't that 10:50:04

15 correct? 10:50:08

16 MS. ESKENAZI: Objection. Vague and 10:50:08

17 ambiguous. 10:50:16

18 THE WITNESS: I believe that the current 10:50:16

19 computer games to which Adrian Laing is referring 10:50:18

20 are essentially the same ones as we had been 10:50:21

21 discussing in this period. 10:50:24

22 BY MR. ULIN: 10:50:24

23 Q. And those are -- and does that also refresh 10:50:26

24 your recollection that those are the same games that 10:50:28

25 were being referred to by Mr. Burnstein in the 10:50:29

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1 letter which we marked as Exhibit 6? 10:50:32

2 MS. ESKENAZI: Objection. Calls for 10:50:34

3 speculation. Lacks foundation. 10:50:35

4 BY MR. ULIN: 10:50:35

5 Q. You may answer. 10:50:38

6 A. I -- I don't know what Mr. Burnstein was 10:50:38

7 referring to. He -- he's very, very broad in 10:50:40

8 that -- in that letter as to what he's referring to. 10:50:44

9 Q. In -- sorry, turning to Exhibit 6 for a 10:50:54

10 moment, the letter from Mr. Burnstein, the second -- 10:51:24

11 on the second page, the final full paragraph, in the 10:51:28

12 center of the paragraph Mr. Burnstein writes: 10:51:33

13 "We know that Interplay 10:51:36

14 Productions continues to sell three 10:51:38

15 games under your license." 10:51:40

16 And then it goes on to talk about royalties 10:51:41

17 for those games. 10:51:43

18 Does that refresh your recollection that 10:51:44

19 Mr. Burnstein is talking about these same Beam games 10:51:47

20 that are being referred to in the response from 10:51:50

21 Mr. Laing? 10:51:56

22 MS. ESKENAZI: Objection. Calls for 10:51:56

23 speculation. Lacks foundation. 10:51:58

24 THE WITNESS: I don't know precisely what 10:52:00

25 Mr. Burnstein was referring to and the relationship 10:52:03

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1 between that and what Mr. Laing was referring to. 10:52:08

2 BY MR. ULIN: 10:52:08

3 Q. Fair enough. Returning to Exhibit 7, and 10:52:12

4 the first full paragraph in Exhibit 7, Mr. -- 10:52:15

5 Mr. Laing writes that he is -- at the bot- -- in the 10:52:25

6 last sentence of paragraph 1 -- "prepared to concede 10:52:30

7 that the right to license computer games in the form 10:52:34

8 licensed under the 1990 and '91 agreements belongs 10:52:39

9 to your client," meaning the Saul Zaentz Company. 10:52:42

10 Do you see that? 10:52:46

11 A. I can see the sentence. 10:52:46

12 Q. Okay. And Mr. Laing is, therefore, 10:52:48

13 conceding for HarperCollins that Saul Zaentz had the 10:52:55

14 right to license the Beam games about which you and 10:52:58

15 Mr. Bendich corresponded in 1993, correct? 10:53:01

16 A. I think you're making too many links there. 10:53:04

17 I don't know what the 1990 and 1991 agreements were. 10:53:09

18 At least I don't recall. I don't recall with whom 10:53:16

19 those agreements were formed and what the subject 10:53:19

20 matter was. 10:53:21

21 And so to answer your question, I would -- 10:53:22

22 I could only answer your question in the affirmative 10:53:25

23 or in the negative, if I reviewed those agreements. 10:53:27

24 Q. Okay. But it does -- the concession of 10:53:32

25 rights is in the context of the Beam games in this 10:53:33

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1 paragraph? 10:53:37

2 A. I don't know. I mean, it doesn't say in 10:53:37

3 this letter that the 1990 and the 1991 agreements 10:53:39

4 were with Beam. 10:53:43

5 Q. Did Mr. Laing share this -- this letter to 10:53:47

6 Mr. Burnstein with you in draft form before it was 10:54:03

7 sent? 10:54:06

8 MS. ESKENAZI: Objection. Attorney-client 10:54:06

9 privilege. Work product. Instruct not to answer. 10:54:09

10 BY MR. ULIN: 10:54:09

11 Q. Did you respond in any way to 10:54:23

12 Mr. Burnstein's letter -- sorry, to Mr. Laing's 10:54:26

13 letter to Mr. Burnstein conceding rights in computer 10:54:29

14 games licensed in 1990 and '91? 10:54:32

15 MS. ESKENAZI: Objection to the extent it 10:54:37

16 calls for attorney-client privileged information. 10:54:40

17 So to the extent that you can answer that 10:54:43

18 question without revealing attorney-client 10:54:46

19 privileges, you're -- the -- Mr. Ulin is entitled to 10:54:49

20 an answer. 10:54:56

21 THE WITNESS: I don't recall. 10:54:56

22 BY MR. ULIN: 10:54:56

23 Q. Okay. Did you communicate with the Saul 10:55:03

24 Zaentz Company or any of its representatives about 10:55:07

25 Mr. Laing's letter and the concession of rights in 10:55:10

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1 computer games licensed in 1990 and '91? 10:55:16

2 MS. ESKENAZI: Objection. Misstates the 10:55:18

3 document. Misstates the evidence. 10:55:19

4 THE WITNESS: I don't recall. 10:55:23

5 BY MR. ULIN: 10:55:23

6 Q. Did you indicate to the Saul Zaentz Company 10:55:28

7 any disagreement with any of the conclusions made by 10:55:30

8 Mr. Laing in his letter of July 18, 1996? 10:55:35

9 A. I don't recall. 10:55:40

10 Q. Mr. -- Mr. Laing, it appears, does not 10:55:41

11 respond specifically to Mr. Burnstein's suggestion 10:56:14

12 that Zaentz holds rights to license online games 10:56:17

13 based on The Lord of the Rings and The Hobbit. 10:56:24

14 Is that your understanding also? 10:56:25

15 MS. ESKENAZI: Objection. Misstates the 10:56:27

16 document. 10:56:30

17 THE WITNESS: Could -- could I ask you to 10:56:35

18 repeat the question? 10:56:37

19 BY MR. ULIN: 10:56:37

20 Q. Yeah, let me rephrase the question. 10:56:39

21 It appears that Mr. Laing does not respond 10:56:40

22 specifically to Mr. Burnstein's suggestion that 10:56:45

23 Zaentz holds rights to license online games versus 10:56:50

24 The Lords of the Rings and The Hobbit; is that 10:56:52

25 correct? 10:56:52

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1 MS. ESKENAZI: Objection. Misstates the 10:56:54
2 document. Also relevance. 10:56:55
3 THE WITNESS: I don't think he refers to 10:57:02
4 the word "online" in this letter. 10:57:03
5 BY MR. ULIN: 10:57:03
6 Q. Do you recall anyone responding to 10:57:05
7 Mr. Burnstein about his assertion relat- -- 10:57:06
8 regarding the right to license online games based on 10:57:08
9 The Lord of the Rings and The Hobbit? 10:57:13
10 A. I don't recall. I think you asked me if I 10:57:15
11 recalled, so the answer is no. 10:57:18
12 MR. ULIN: Exhibit 8. 10:57:49
13 (The document referred to was 10:58:10
14 marked for identification as 10:58:10
15 Exhibit 8 and attached to this 10:58:10
16 deposition.) 10:58:11
17 MS. ESKENAZI: May I have a copy of it? 10:58:11
18 MR. ULIN: Yes. 10:58:12
19 MS. ESKENAZI: Thank you. 10:58:13
20 THE WITNESS: I've read the document. 10:58:45
21 BY MR. ULIN: 10:58:45
22 Q. Okay. Ms. Blackburn, have you seen Exhibit 10:58:49
23 8 before? 10:58:49
24 A. Yes. 10:58:52
25 Q. And you recognize this as a letter from Al 10:58:52

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1 Bendich to you of October the 2nd, 1997? 10:58:56

2 A. Yes, I do. 10:58:59

3 Q. And do you recall receiving this letter 10:58:59

4 around that time? 10:59:01

5 A. I don't have any specific recollection, but 10:59:06

6 it's clear that I did. 10:59:08

7 Q. And in the fourth full paragraph of the 10:59:09

8 letter, Mr. Bendich reports to you that the Zaentz 10:59:15

9 company has been negotiating with several competing 10:59:19

10 companies for rights to graphics-based video, 10:59:23

11 CD-ROM, online and other interactive computer games. 10:59:27

12 Do you see that? 10:59:30

13 A. I do. 10:59:30

14 Q. Okay. Did you have any conversations with 10:59:34

15 Mr. Bendich in response to his -- let me start that 10:59:39

16 question again. 10:59:46

17 Did you have any conversations with 10:59:46

18 Mr. Bendich about whether Zaentz had the right to 10:59:48

19 license online and interactive computer games? 10:59:52

20 A. I don't recall. 10:59:56

21 Q. At this -- I'm sorry, in response to this 10:59:57

22 letter in 1997? 11:00:00

23 A. I don't recall. 11:00:00

24 Q. As you sit here today, you don't recall 11:00:02

25 having conversations with him in 1997 about whether 11:00:03

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1	Zaentz had the right to license online or	11:00:06
2	interactive computer games; is that correct?	11:00:09
3	MS. ESKENAZI: Objection. Vague and	11:00:12
4	ambiguous.	11:00:16
5	THE WITNESS: Sitting here today, I don't	11:00:16
6	recall having discussed the subject matter of that	11:00:17
7	paragraph with Mr. Bendich at that time.	11:00:22
8	BY MR. ULIN:	11:00:22
9	Q. Did you -- well, let me ask this: What was	11:00:43
10	your response to the information that Zaentz was	11:00:49
11	negotiating with several companies concerning the	11:00:54
12	rights to develop online or interactive computer	11:00:57
13	games concerning The Lord of the Rings?	11:01:02
14	A. Sorry, could you --	11:01:05
15	MS. ESKENAZI: Objection.	11:01:06
16	THE WITNESS: Sorry.	11:01:07
17	MS. ESKENAZI: Objection. Vague and	11:01:08
18	ambiguous.	11:01:09
19	MR. ULIN: Sure.	11:01:09
20	Q. What was your response to Mr. Bendich's	11:01:09
21	letter informing you that Zaentz was negotiating	11:01:14
22	with several companies concerning the right to	11:01:20
23	develop online and interactive computer games	11:01:22
24	concerning The Lord of the Rings?	11:01:24
25	MS. ESKENAZI: Same objection. Vague and	11:01:26

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1	ambiguous.	11:01:27
2	THE WITNESS: I don't recall.	11:01:27
3	BY MR. ULIN:	11:01:27
4	Q. You understood at that -- sorry, let me ask	11:01:37
5	the question again.	11:01:41
6	By 1997, online and interactive games were	11:01:41
7	already available over the Internet. Is that your	11:01:48
8	understanding?	11:01:51
9	MS. ESKENAZI: Objection. It's vague and	11:01:51
10	ambiguous.	11:01:52
11	THE WITNESS: I don't know.	11:01:52
12	BY MR. ULIN:	11:01:52
13	Q. Okay. Did you take the position in	11:01:55
14	response to this letter that Zaentz could not	11:02:10
15	license online computer games unless they had some	11:02:17
16	physical component?	11:02:20
17	A. No, I didn't. And the reason I wouldn't	11:02:23
18	have done that is that they knew that.	11:02:26
19	MR. PETROCELLI: Move to strike as	11:02:29
20	nonresponsive after the words, "No, I didn't."	11:02:30
21	MS. ESKENAZI: Just to be clear,	11:02:34
22	Mr. Petrocelli's motion to strike has no effect	11:02:35
23	in -- in this deposition, so you can answer whatever	11:02:38
24	you need to answer to be accurate.	11:02:41
25	THE WITNESS: Thank you.	11:02:43

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1 BY MR. ULIN: 11:02:43

2 Q. Do you recall subsequently being informed 11:03:19

3 about Zaentz's negotiating a video game license with 11:03:22

4 a company called Sierra On-Line? 11:03:27

5 A. Yes. 11:03:29

6 Q. And who at Zaentz did you discuss this 11:03:31

7 Sierra On-Line license with? 11:03:34

8 A. I don't know that I did discuss the 11:03:39

9 Sierra -- you asked me about being informed. 11:03:42

10 Q. Okay. And when you say -- so let's probe 11:03:48

11 that. 11:03:51

12 How were you informed of Zaentz's 11:03:51

13 negotiations with Sierra On-Line? 11:03:55

14 A. I don't -- I don't recall. 11:03:56

15 MR. ULIN: Let's mark Exhibit 9. 11:04:27

16 (The document referred to was 11:04:28

17 marked for identification as 11:04:28

18 Exhibit 9 and attached to this 11:04:28

19 deposition.) 11:04:28

20 MR. ULIN: Oh, I see. Okay. These ones 11:05:15

21 are double-sided. It's half as thick, so it gave me 11:05:15

22 some pause. 11:05:15

23 MS. ESKENAZI: This is number 9? 11:05:25

24 MR. ULIN: Yes. 11:05:25

25 Q. Ms. Blackburn, have you seen Exhibit 9 11:06:37

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1 before? 11:06:40

2 A. I've seen the letter from Laurie Battle 11:06:40

3 before. 11:06:46

4 Q. Okay. And have you seen the attached 11:06:46

5 license agreement? 11:06:48

6 A. If that's the attachment to her letter, 11:06:49

7 then yes, I've seen that. 11:06:53

8 Q. Okay. And this letter from Laurie Battle, 11:06:58

9 is this one of the means by which you were informed 11:07:01

10 of Zaentz's negotiations with Sierra On-Line? 11:07:05

11 A. Yes. 11:07:08

12 Sorry, can I ask a question? Did you say 11:07:15

13 informed about the negotiations? 11:07:18

14 Q. I did. And I -- go ahead. 11:07:22

15 A. Because by the time of this letter, it 11:07:25

16 seems that it's happened. 11:07:29

17 Q. Fair enough. 11:07:31

18 A. Except that the license agreement -- she 11:07:32

19 says, "a copy of the signed license agreement" but 11:07:36

20 this isn't signed and it doesn't seem to have an end 11:07:39

21 page. So I simply make that observation. 11:07:43

22 Q. Fair enough. Do you recall seeing this 11:07:47

23 letter or -- on or around November the 12th, 1998? 11:08:00

24 A. I recall seeing it sometime after it was 11:08:04

25 sent and I have no reason to think it wasn't 11:08:10

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1 reasonably contemporaneously. 11:08:12

2 Q. Fair enough. Turning to the attached 11:08:16

3 license agreement. 11:08:21

4 A. Yeah. 11:08:22

5 Q. At the second page of the agreement, the 11:08:28

6 document provides in its definition section at 11:08:43

7 paragraph (e), the definition of an interactive 11:08:48

8 software product. 11:08:51

9 Do you see that? 11:08:52

10 A. Yes, I see that. 11:08:52

11 Q. Okay. And among those definitions includes 11:08:56

12 software product that is "embodied in software or 11:09:00

13 other digital electronic form and capable of use or 11:09:05

14 operation on one or more of the licensed platforms." 11:09:10

15 Do you see that? 11:09:12

16 A. I'm not sure whether you read it -- read it 11:09:16

17 out. I can see the definition paragraph. 11:09:17

18 Q. Did you read these definitions at the time 11:09:20

19 you received this document? 11:09:22

20 A. I don't recall. 11:09:24

21 Q. Okay. In paragraph (f) of the definition 11:09:32

22 of licensed platforms, it -- Roman numeral (iii) -- 11:09:35

23 A. Yes. 11:09:42

24 Q. -- includes "any online network, including 11:09:43

25 without limitation, the global computer network 11:09:47

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1 commonly known as the Internet." 11:09:52

2 Do you see that? 11:09:53

3 A. Yes. 11:09:54

4 Q. Did you read that definition at the time 11:09:54

5 you received this license? 11:09:56

6 MS. ESKENAZI: Objection. Asked and 11:09:57

7 answered. 11:09:58

8 You can answer again. 11:09:59

9 THE WITNESS: I don't recall. 11:09:59

10 BY MR. ULIN: 11:09:59

11 Q. And sorry, in the -- in paragraph (g) of 11:10:12

12 the -- of the license, an entertainment product is 11:10:17

13 defined as "any interactive software product." 11:10:19

14 Do you see that? 11:10:23

15 A. Yes. 11:10:23

16 Q. And that term was defined above in 11:10:23

17 paragraph (e), right? 11:10:25

18 MS. ESKENAZI: Objection. Calls for a 11:10:26

19 legal conclusion. 11:10:28

20 MR. ULIN: She's a lawyer. 11:10:28

21 THE WITNESS: I can see that at paragraph 11:10:31

22 (e) there's a definition of interactive software 11:10:33

23 product. 11:10:35

24 BY MR. ULIN: 11:10:35

25 Q. And then finally turning to the -- to the 11:10:36

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1 following page, paragraph (1), the definition of 11:10:38
2 commercial release -- 11:10:45
3 A. Yes. 11:10:47
4 Q. -- includes making available for download 11:10:50
5 of a licensed product. 11:10:53
6 Do you see that? 11:10:55
7 A. Well, the definition of commercial release 11:10:55
8 is stated to mean "the shipment, license, sale or 11:11:01
9 making available for sale, use or download of a" -- 11:11:05
10 "a licensed product." I don't think that was what 11:11:09
11 you said. 11:11:12
12 Q. No, what I said is that it includes making 11:11:12
13 a -- making a licensed product available for 11:11:15
14 download. 11:11:20
15 Would you agree with that? 11:11:23
16 A. It includes -- 11:11:23
17 MS. ESKENAZI: Objection. Misstates the 11:11:25
18 document. 11:11:26
19 THE WITNESS: Could you repeat, please? 11:11:28
20 BY MR. ULIN: 11:11:29
21 Q. Yes. The definition of "commercial 11:11:29
22 release" includes making a licensed product 11:11:31
23 available for download. 11:11:35
24 A. I don't think that is what it says. 11:11:42
25 Q. Because it includes more -- other means of 11:11:45

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1 commercial release? 11:11:56

2 A. Yes. 11:11:57

3 Q. Okay. But one of the means of commercial 11:12:01

4 release that's included on that list is making the 11:12:03

5 licensed product available for download, correct? 11:12:05

6 MS. ESKENAZI: Same objection. Misstates 11:12:08

7 the document. Calls for a legal conclusion. 11:12:11

8 THE WITNESS: Sorry. 11:12:34

9 BY MR. ULIN: 11:12:34

10 Q. So the question was, one of the means of 11:12:36

11 commercial release included is making the licensed 11:12:38

12 product available for download, correct? 11:12:42

13 MS. ESKENAZI: Same objections. 11:12:48

14 You can answer if you understand. 11:12:48

15 THE WITNESS: I think -- I think that's 11:13:00

16 what it was saying is, as a summary of -- in stating 11:13:01

17 an element of what that definition -- definition 11:13:04

18 encompasses, I can accept. 11:13:07

19 BY MR. ULIN: 11:13:07

20 Q. So the license includes making interactive 11:13:11

21 games available for download over the Internet. Let 11:13:26

22 me -- let me start -- let me rephrase that. 11:13:31

23 So the license authorizes Sierra On-Line to 11:13:34

24 make interactive games available for download over 11:13:40

25 the Internet; is that correct? 11:13:44

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1 MS. ESKENAZI: Objection. Misstates the 11:13:46
2 document. 11:13:47
3 THE WITNESS: What we're looking at here 11:13:49
4 is -- is a -- a defined term which includes the word 11:13:52
5 "download." I don't think -- I don't know whether 11:13:55
6 that references what Sierra On-Line is being 11:13:58
7 authorized to do or not. 11:14:02
8 BY MR. ULIN: 11:14:02
9 Q. Did you ask anyone to review this license 11:14:27
10 at the time you received it? 11:14:36
11 MS. ESKENAZI: Objection. Vague and 11:14:38
12 ambiguous. And to the extent it calls for 11:14:40
13 attorney-client information, it's privileged. 11:14:45
14 THE WITNESS: I don't -- I don't understand 11:14:49
15 the question. 11:14:51
16 BY MR. ULIN: 11:14:51
17 Q. Okay. Did you make an effort to determine 11:14:51
18 whether this license was within Zaentz's rights to 11:14:54
19 grant a license for video game development at the 11:14:58
20 time you received it? 11:15:02
21 MS. ESKENAZI: Objection. Vague and 11:15:05
22 ambiguous. 11:15:06
23 THE WITNESS: I would have reviewed this 11:15:07
24 document with that consideration in mind. 11:15:11
25 BY MR. ULIN: 11:15:11

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1 Q. Okay. Let's turn to Exhibit Number 10. 11:15:22
2 I'll give you that in just a moment. 11:15:27
3 (The document referred to was 11:15:47
4 marked for identification as 11:15:47
5 Exhibit 10 and attached to this 11:15:47
6 deposition.) 11:15:51
7 MS. ESKENAZI: Can I get a copy? 11:15:51
8 MR. ULIN: Yes, you certainly may. I keep 11:15:52
9 doing that. 11:15:54
10 Q. Ms. Blackburn, have you seen Exhibit 10 11:16:48
11 before? 11:16:51
12 A. Yes. 11:16:51
13 Q. Do you recognize this as a fax letter that 11:16:52
14 you sent to Laurie Battle at the Saul Zaentz Company 11:16:53
15 on or about the 16th of November 1998? 11:16:57
16 A. Yes, I do. 11:16:59
17 Q. And this fax responds to the letter that 11:17:02
18 was marked as Exhibit 9, correct? 11:17:05
19 A. Yeah. Yes. 11:17:09
20 Q. Okay. And you indicate your view in the 11:17:19
21 second full paragraph, that the rights that the Saul 11:17:22
22 Zaentz Company granted to Sierra fall within the 11:17:27
23 1969 merchandising agreements as opposed to rights 11:17:32
24 granted under contracts A and B, correct? 11:17:38
25 A. Correct. 11:17:40

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1 Q. Okay. And you do not suggest in this 11:17:46
2 letter that any portion of the Sierra license 11:17:47
3 exceeds the rights that Zaentz was granted in the 11:17:50
4 1969 merchandising agreements, do you? 11:17:55

5 MS. ESKENAZI: Objection. Misstates the 11:17:57
6 document. 11:17:58

7 THE WITNESS: Could you repeat the 11:18:00
8 question, please? 11:18:00

9 BY MR. ULIN: 11:18:01

10 Q. Sure. You do not suggest in this letter 11:18:02
11 that any portion of the Sierra license exceeds the 11:18:08
12 rights that Zaentz was granted in the 1969 11:18:10
13 merchandising agreements, do you? 11:18:13

14 MS. ESKENAZI: Same objection. And 11:18:15
15 document speaks for itself. 11:18:21

16 THE WITNESS: Well, I -- I do pick up a 11:18:23
17 point on that agreement on page 2 of my fax. 11:18:25

18 BY MR. ULIN: 11:18:25

19 Q. What are you referring to? 11:18:30

20 A. I looked -- I was drawing Laurie Battle's 11:18:31
21 attention to the definition of "licensed content." 11:18:35

22 Q. Okay. And actually I was going to ask you 11:18:41
23 about that. So that does suggest that you did read 11:18:43
24 the definitions in -- 11:18:45

25 A. It does. It does. 11:18:46

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1 Q. We just need to avoid talking over one 11:18:48
2 another. 11:18:51
3 A. Sorry. Apologies. 11:18:51
4 Q. I'm going to ask the question again just to 11:18:52
5 make the record clear. 11:18:54
6 A. Okay. 11:18:55
7 Q. That does suggest that you did read the 11:18:55
8 definitions in the license agreement in 1998 when 11:18:58
9 Ms. Battle sent them to you, correct? 11:19:00
10 A. Well, I think it suggests I read that one. 11:19:02
11 Q. At the very least you read the definition 11:19:04
12 of "licensed content" -- 11:19:10
13 A. I did. 11:19:11
14 Q. -- correct? 11:19:11
15 And as you sit here today, you can't recall 11:19:12
16 whether you read the other definitions that are in 11:19:13
17 the agreement; is that right? 11:19:15
18 MS. ESKENAZI: Asked and answered. 11:19:17
19 THE WITNESS: I notice that I write to 11:19:20
20 Laurie very soon after her letter to me of November 11:19:22
21 11. Whether I had reviewed the whole thing in 11:19:27
22 detail at that point must therefore be questionable. 11:19:31
23 But I don't recall. 11:19:40
24 BY MR. ULIN: 11:19:40
25 Q. And so, I'm sorry, you were -- you had 11:19:44

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1 pointed out the licensed content comment as an 11:19:47
2 example of where you questioned whether the license 11:19:51
3 granted by Zaentz to Sierra was within the rights 11:19:55
4 that Zaentz was granted under the 1969 merchandising 11:19:58
5 agreements; is that correct? 11:20:03

6 MS. ESKENAZI: Objection. Misstates the 11:20:07
7 document. Document speaks for itself. 11:20:08

8 THE WITNESS: What I'm pointing out here is 11:20:11
9 if Sierra wants to use printed words from the works, 11:20:13
10 they'll have to have a license from the Tolkien 11:20:24
11 Estate. 11:20:27

12 BY MR. ULIN: 11:20:27

13 Q. Okay. Other than that indication of when 11:20:29
14 you thought Sierra would need a license from the 11:20:32
15 Tolkien Estate, did you make any other suggestions 11:20:35
16 about when Sierra would need a license from the 11:20:39
17 Tolkien Estate in connection with its games? 11:20:45

18 A. I don't believe I did. 11:20:49

19 Q. Did you make any other reference to rights 11:20:50
20 granted under the Sierra license that might be 11:20:54
21 outside the scope of the rights that Zaentz was 11:20:56
22 granted in the 1969 merchandising agreements? 11:20:59

23 MS. ESKENAZI: Objection. Vague and 11:21:01
24 ambiguous. Document speaks for itself. Misstates 11:21:04
25 the document. 11:21:07

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1 BY MR. ULIN: 11:21:07

2 Q. You may answer. 11:21:08

3 A. I don't recall. 11:21:09

4 Q. As you sit here today looking at this 11:21:16

5 letter, can you identify any other place where you 11:21:17

6 indicated to Zaentz that some portion of the rights 11:21:20

7 granted to Sierra was beyond what they were entitled 11:21:24

8 to grant under the merchandising agreements? 11:21:31

9 MS. ESKENAZI: Objection. Document speaks 11:21:33

10 for itself. 11:21:34

11 THE WITNESS: Could you repeat that -- 11:21:35

12 BY MR. ULIN: 11:21:35

13 Q. Sure. 11:21:35

14 A. -- sentence, that question, please. 11:21:38

15 Q. As you sit here today looking at this 11:21:41

16 letter, can you identify any other place where you 11:21:42

17 indicated that any of the rights that Zaentz granted 11:21:45

18 to Sierra On-Line were beyond what they were 11:21:47

19 entitled to license under the 1969 merchandising 11:21:51

20 agreements? 11:21:55

21 A. No. 11:21:55

22 Q. And separate and apart from this letter, at 11:22:11

23 any time prior to 2010 can you recall telling 11:22:17

24 anybody at Zaentz that rights granted under the 11:22:24

25 Sierra On-Line license went beyond the rights that 11:22:27

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1	Zaentz could grant pursuant to the 1969	11:22:31
2	merchandising agreements?	11:22:35
3	A. The beginning of that?	11:22:37
4	MS. ESKENAZI: Objection. Vague and	11:22:40
5	ambiguous.	11:22:41
6	MR. ULIN: Sure.	11:22:41
7	Q. Separate and apart from this letter, at any	11:22:41
8	time prior to 2010, can you recall telling anybody	11:22:45
9	at Zaentz that rights they granted under the Sierra	11:22:47
10	On-Line license were outside the scope of the rights	11:22:51
11	that Zaentz was granted under the 1969 merchandising	11:22:54
12	agreements?	11:22:56
13	MS. ESKENAZI: Objection. Vague and	11:22:58
14	ambiguous.	11:22:58
15	THE WITNESS: No. I cannot recall.	11:22:59
16	BY MR. ULIN:	11:22:59
17	Q. So as you sit here today, you can recall	11:23:03
18	no -- no instance, correct?	11:23:05
19	MS. ESKENAZI: Same objection.	11:23:08
20	THE WITNESS: I think I've answered the	11:23:09
21	question.	11:23:11
22	BY MR. ULIN:	11:23:11
23	Q. Fair enough. And your letter to Ms. Battle	11:23:11
24	in November of 1998 makes no reference to the	11:23:28
25	possibility that Sierra's games -- let me start that	11:23:34

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1 question again. 11:23:40

2 Your -- your letter to Ms. Battle makes no 11:23:40

3 reference to the possibility that games under the 11:23:43

4 Sierra license could be commercially released by 11:23:46

5 making them available for download over the 11:23:49

6 Internet, right? 11:23:53

7 MS. ESKENAZI: Objection. Vague and 11:23:54

8 ambiguous. Document speaks for itself. 11:23:55

9 THE WITNESS: Could you -- I'm sorry. 11:23:59

10 Could you repeat that? 11:24:01

11 BY MR. ULIN: 11:24:01

12 Q. Sure. You make no reference in this 11:24:02

13 November 1998 letter to the possibility that games 11:24:04

14 that are released pursuant to the Sierra license 11:24:06

15 could be released by making them available for 11:24:08

16 download over the Internet, right? 11:24:11

17 MS. ESKENAZI: Objection. Vague and 11:24:13

18 ambiguous. Also the document speaks for itself. 11:24:15

19 THE WITNESS: I think the document does 11:24:17

20 speak for itself. There's no -- there's no 11:24:18

21 reference in it to those things. 11:24:20

22 BY MR. ULIN: 11:24:20

23 Q. Okay. Let's go to this one. 11:24:37

24 I direct your attention to a communication 11:24:38

25 from you to Al Bendich at Zaentz from the 4th of 11:24:41

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1 August 2000. We'll mark this as Exhibit 11. 11:24:48
2 (The document referred to was 11:24:48
3 marked for identification as 11:24:48
4 Exhibit 11 and attached to this 11:24:48
5 deposition.) 11:25:08
6 THE WITNESS: Yeah, thank you. 11:26:08
7 BY MR. ULIN: 11:26:08
8 Q. And Ms. Blackburn, have you seen Exhibit 11 11:26:10
9 before? 11:26:14
10 A. Yes. 11:26:14
11 Q. Okay. You recognize this as a fax letter 11:26:15
12 that you sent to Mr. Bendich on or about the 4th of 11:26:18
13 August 2000? 11:26:20
14 A. Yes, I do. 11:26:21
15 Q. And you are writing about a call you 11:26:22
16 received from someone named David Williamson at 11:26:28
17 Sierra, correct? 11:26:30
18 A. It just says he's been in contact. 11:26:31
19 Q. Okay. And do you recall being contacted by 11:26:35
20 David Williamson of Sierra around that time? 11:26:38
21 A. No. 11:26:40
22 Q. Okay. You say he asked you about 11:26:41
23 interactive rights in various Tolkien works. 11:26:43
24 Do you see that? 11:26:46
25 A. I say he was trying to establish just who 11:26:47

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1 owns what interactive rights. 11:26:53

2 Q. Okay. What did you understand the term 11:26:55

3 "interactive rights" to mean? 11:26:56

4 A. I don't suppose I knew. 11:26:58

5 Q. Did you understand them to mean rights in 11:27:03

6 online gaming? 11:27:17

7 A. I don't know what I understood them to 11:27:18

8 mean. 11:27:23

9 Q. Okay. Sitting here today, what do you 11:27:29

10 understand the term "interactive rights" to mean? 11:27:31

11 MS. ESKENAZI: Objection. Relevance. 11:27:33

12 Assumes facts not in evidence. 11:27:36

13 THE WITNESS: I don't think it's possible 11:27:42

14 to -- to -- to state what that means. 11:27:43

15 BY MR. ULIN: 11:27:43

16 Q. You indicate in the next sentence that you 11:27:47

17 told Mr. Williamson that all you could usefully say 11:27:52

18 to him was that the license which SZC granted to 11:27:56

19 Sierra was validly granted. 11:28:01

20 Do you see that? 11:28:03

21 A. Yeah. 11:28:03

22 Q. And that's the license that we were just 11:28:04

23 discussing a few minutes ago, correct? 11:28:05

24 A. I imagine it is. 11:28:07

25 Q. Okay. And what did you mean by saying that 11:28:13

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1 it was validly granted? 11:28:14

2 A. Mr. Williamson's company was in litigation 11:28:21

3 with the Saul Zaentz Company. I think he was trying 11:28:23

4 to drive a wedge between the Saul Zaentz Company and 11:28:29

5 the Tolkien Estate. I didn't want that to happen. 11:28:35

6 Being a business partner with the Saul Zaentz 11:28:42

7 Company when they're in litigation with somebody, I 11:28:45

8 didn't want to be in any way unhelpful to them. And 11:28:47

9 that's why I said what I did. 11:28:52

10 Q. Okay. And it was your understanding that, 11:28:58

11 in fact, that license was validly granted, correct? 11:29:01

12 MS. ESKENAZI: Objection. Assumes facts 11:29:04

13 not in evidence. 11:29:06

14 THE WITNESS: Could you possibly repeat the 11:29:09

15 beginning of that sentence? 11:29:13

16 BY MR. ULIN: 11:29:13

17 Q. It was your understanding that, in fact, 11:29:14

18 the Saul Zaentz license to Sierra On-Line was 11:29:15

19 validly granted, correct? 11:29:20

20 MS. ESKENAZI: Same objection. And vague 11:29:23

21 and ambiguous. 11:29:23

22 BY MR. ULIN: 11:29:23

23 Q. That's what you told Mr. Williamson, 11:29:32

24 correct? 11:29:32

25 A. That's right, yes. 11:29:34

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1 Q. And it's previously what you told 11:29:35
2 Ms. Battle in the last letter that we looked at, 11:29:37
3 correct? 11:29:37
4 MS. ESKENAZI: Objection. Misstates the 11:29:39
5 document. 11:29:40
6 THE WITNESS: I didn't -- I didn't say that 11:29:46
7 in this letter to Laurie Battle. 11:29:48
8 BY MR. ULIN: 11:29:48
9 Q. You indicate that the rights granted to 11:30:00
10 Sierra fall within the 1969 merchandising 11:30:02
11 agreements, correct? 11:30:05
12 A. Sorry, are we back on Exhibit 10 now? 11:30:07
13 Q. Back on your letter to Ms. Battle and 11:30:09
14 that's my last question on that document. 11:30:12
15 MS. ESKENAZI: Objection. Document speaks 11:30:13
16 for itself. 11:30:16
17 THE WITNESS: Could I -- I'm sorry. Could 11:30:19
18 I have the question again? 11:30:20
19 BY MR. ULIN: 11:30:21
20 Q. Sure. You indicate in your November 16, 11:30:23
21 1998 letter to Ms. Battle that the rights granted by 11:30:26
22 Zaentz to Sierra fall within the 1969 merchandising 11:30:32
23 agreements, correct? 11:30:36
24 MS. ESKENAZI: Objection. Misstates the 11:30:37
25 document. 11:30:38

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1 THE WITNESS: What I say in my second 11:30:45
2 paragraph is that the relevant agreement for the 11:30:53
3 Sierra rights is the 1969 agreement. They have to 11:30:56
4 be viewed against that contractual framework, not 11:31:00
5 the contractual framework which applies to films. 11:31:03
6 BY MR. ULIN: 11:31:03
7 Q. Fair enough. Turning back to Exhibit 11, 11:31:15
8 the second page, you refer Sierra back to Zaentz on 11:31:45
9 the question of combining their interactive rights 11:31:51
10 with any -- which New Line may have. 11:31:53
11 Do you see that? 11:31:56
12 MS. ESKENAZI: Objection. Vague and 11:31:57
13 ambiguous. 11:31:57
14 BY MR. ULIN: 11:31:57
15 Q. First paragraph on page 2. 11:32:12
16 MS. ESKENAZI: That misstates the document. 11:32:13
17 THE WITNESS: I've read that paragraph. 11:32:21
18 Now, would you please repeat the question? 11:32:23
19 BY MR. ULIN: 11:32:24
20 Q. Sure. There's a -- you were referring 11:32:25
21 Mr. Williamson back to Saul Zaentz in response to 11:32:28
22 his expression of interest in combining Sierra's 11:32:33
23 interactive rights and any which New Line Cinema 11:32:36
24 might have, correct? 11:32:39
25 A. No, I don't think that -- I don't think 11:32:41

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1 that was what was -- what I'm referring to. 11:32:42

2 Q. What are you referring to? 11:32:46

3 A. Mr. Williamson also said that his company 11:32:47

4 was interested in the combination of their 11:32:54

5 interactive rights -- rights and any which New Line 11:32:57

6 Cinema might have. 11:33:00

7 I think what he was trying to establish 11:33:01

8 with me was the -- essentially was what -- what 11:33:03

9 rights in computer games the Saul Zaentz Company had 11:33:09

10 and what rights in computer games New Line Cinema 11:33:13

11 had. 11:33:17

12 Q. Okay. And why -- and -- and why did you 11:33:19

13 refer him to the Saul Zaentz Company on that 11:33:23

14 subject? 11:33:25

15 A. Because I -- I didn't know what the 11:33:25

16 relationship was between those two companies and how 11:33:27

17 they had subdivided the computer games category of 11:33:32

18 merchandise. 11:33:37

19 Q. Fair enough. 11:33:38

20 I think at this point this is a good time 11:33:40

21 for us to break. Let's see if I can -- 11:33:42

22 THE VIDEOGRAPHER: This is the end of media 11:33:45

23 number 2. Off the record at 11:34 a.m. 11:33:47

24 (Brief recess.) 11:34:29

25 THE VIDEOGRAPHER: We are back on the 11:42:53

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1 record at 11:44 a.m. This is the beginning of media 11:43:03
2 number 3. Counsel may proceed. 11:43:07
3 BY MR. ULIN: 11:43:07
4 Q. Ms. Blackburn, when we spoke earlier about 11:43:12
5 Laurie Battle's letter to you, which is Exhibit 9, 11:43:16
6 from November the 12th, 1998, you indicated that you 11:43:19
7 don't recall specifically reviewing paragraph by 11:43:23
8 paragraph the license agreement that's attached to 11:43:28
9 that letter; is that correct? 11:43:32
10 A. I don't recall doing it, but I believe I 11:43:34
11 did. 11:43:36
12 Q. You believe you did. 11:43:37
13 And that would have been part of your 11:43:37
14 responsibility of managing trademarks and licensing 11:43:40
15 for the Estate, correct? 11:43:43
16 A. Yes. 11:43:43
17 Q. And managing the relationship with -- with 11:43:47
18 Saul Zaentz, correct? 11:43:49
19 A. Yes. 11:43:49
20 Q. And assuring yourself that whatever Saul 11:43:51
21 Zaentz was licensing was appropriately within the 11:43:53
22 scope of -- of what they were entitled to license, 11:43:55
23 correct? 11:43:55
24 A. Yes. 11:43:55
25 Q. Okay. So while you don't specifically 11:44:05

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1 recall, as you sit here today, reviewing the 11:44:07
2 paragraphs of the definition section of that 11:44:11
3 agreement that I called out, it's very likely, in 11:44:14
4 fact almost certain, that you did actually review 11:44:16
5 those paragraphs, correct? 11:44:18
6 MS. ESKENAZI: Objection. Misstates the 11:44:20
7 testimony. 11:44:21
8 MR. ULIN: I'm not asking about her prior 11:44:24
9 testimony. 11:44:25
10 THE WITNESS: I -- I believe I would have 11:44:27
11 reviewed that document. 11:44:28
12 BY MR. ULIN: 11:44:30
13 Q. And all of the paragraphs in the document, 11:44:30
14 correct? 11:44:30
15 A. The whole thing. 11:44:33
16 Q. And you would have reviewed them carefully 11:44:33
17 to assure yourself that the doc- -- that the license 11:44:38
18 agreement was a proper exercise of Zaentz's rights, 11:44:39
19 correct? 11:44:39
20 A. Yes. 11:44:39
21 MR. ULIN: Let's mark Exhibit 12 and put it 11:44:44
22 before the witness. 11:44:47
23 (The document referred to was 11:44:48
24 marked for identification as 11:44:48
25 Exhibit 12 and attached to this 11:44:48

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1 deposition.) 11:45:34

2 MR. ULIN: Sorry. Just a question for you:

3 Is it -- is it preferable for you to get a

4 double-sided or single-sided document?

5 THE REPORTER: Doesn't matter.

6 MR. ULIN: Doesn't matter? Okay. I'll

7 give you the double- -- the single-sided document.

8 It's the same document, it's just this is a

9 double-sided version.

10 Q. Ms. Blackburn, have you seen Exhibit 12 11:45:34

11 before? 11:45:36

12 A. I don't recollect this document. 11:45:37

13 Q. I'll represent to you and you can see from 11:45:42

14 the Bates number at the bottom right-hand corner of 11:45:45

15 the document that this is a document produced by the 11:45:48

16 plaintiffs in this case. 11:45:53

17 Do -- do you have any understanding of 11:45:56

18 whether this document comes from the Estate's files? 11:45:58

19 MS. ESKENAZI: Objection. Asked and 11:46:02

20 answered. 11:46:03

21 THE WITNESS: I don't -- I couldn't answer 11:46:05

22 that question. I don't know. 11:46:06

23 BY MR. ULIN: 11:46:06

24 Q. Does it come from your files? 11:46:08

25 MS. ESKENAZI: Same objection. 11:46:10

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1 THE WITNESS: There's nothing on this 11:46:12
2 document that enables me to identify it as coming 11:46:13
3 from -- when you say my files, do you mean the files 11:46:16
4 of Maier Blackburn or the law firm in question? 11:46:20
5 BY MR. ULIN: 11:46:20
6 Q. Well, let's start with your personal files. 11:46:24
7 A. Well, I don't have personal files. I have 11:46:26
8 files that I maintain as a lawyer for the Tolkien 11:46:28
9 Estate. 11:46:32
10 Q. Okay. Does it come from the files that you 11:46:33
11 maintain as a lawyer for the Tolkien Estate? 11:46:35
12 A. I don't know. 11:46:37
13 Q. Do you recall receiving -- let me -- 11:46:37
14 actually, let me ask a different question first. 11:46:45
15 The document is titled "Tolkien Enterprises 11:46:47
16 Active Merchandise Licensees List as of April 26, 11:46:51
17 2001." 11:46:55
18 Do you see that? 11:46:56
19 A. Yes. 11:46:56
20 Q. And is it your understanding that Tolkien 11:46:56
21 Enterprises was a dba for the Saul Zaentz Company? 11:46:59
22 A. What's a dba? 11:47:05
23 Q. Doing business as. Another business name. 11:47:07
24 MS. ESKENAZI: Objection. Calls for 11:47:09
25 speculation. Lacks foundation. 11:47:12

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1 THE WITNESS: You asked me is Tolkien 11:47:13
2 Enterprises the business name of the Saul Zaentz 11:47:22
3 Company? 11:47:24
4 BY MR. ULIN: 11:47:24
5 Q. Or was it at this time in 2001? 11:47:25
6 A. I don't know. There were various 11:47:28
7 restructurings. 11:47:29
8 Q. You understand Tolkien Enterprises to be a 11:47:30
9 Zaentz entity, though, correct? 11:47:34
10 A. For present purposes, yes. 11:47:35
11 Q. Okay. Do you recall receiving a list of 11:47:41
12 active licensees from Zaentz in 2001? 11:47:45
13 A. No. 11:47:49
14 Q. Do you regularly receive lists of active 11:47:50
15 licensees from Zaentz? 11:47:53
16 A. No. 11:47:54
17 Q. Okay. Do you regularly review Zaentz's 11:47:59
18 licenses and licensing activity? 11:48:01
19 MS. ESKENAZI: Objection. Vague and 11:48:05
20 ambiguous. 11:48:06
21 THE WITNESS: I don't regularly review 11:48:09
22 their licenses. 11:48:19
23 BY MR. ULIN: 11:48:19
24 Q. Okay. This document, Exhibit 12, refers to 11:48:21
25 a license to Decipher, Inc. for collectable card 11:48:29

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1 games and collectable card games in digital 11:48:35
2 electronic form. 11:48:37
3 Do you see that? 11:48:38
4 A. Yes. 11:48:38
5 Q. Are you aware of a license that Zaentz 11:48:39
6 granted to Decipher, Inc.? 11:48:44
7 MS. ESKENAZI: Objection. Vague and 11:48:49
8 ambiguous. 11:48:54
9 THE WITNESS: I recall the name Decipher, 11:48:54
10 Inc. and I can recall having issues with what 11:48:56
11 Decipher was licensed to do, but I can't recall the 11:48:59
12 detail. 11:49:02
13 BY MR. ULIN: 11:49:02
14 Q. Okay. Are you -- well, you say you had 11:49:07
15 issues with what Decipher was licensed to do. 11:49:11
16 What do you understand Decipher was 11:49:13
17 licensed to do? 11:49:16
18 A. I don't know, but some information I had as 11:49:18
19 to what they were doing, I -- I had issues with. 11:49:20
20 Q. Okay. Are you aware of how Decipher's 11:49:26
21 digital card game operate -- operated? 11:49:31
22 A. No. 11:49:35
23 Q. Do you know one way or another whether that 11:49:36
24 game was played entirely online? 11:49:37
25 A. I have no knowledge of that game -- 11:49:42

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1 Q. Okay. 11:49:44

2 A. -- and how it was played. 11:49:45

3 Q. Would -- in the course of your managing the 11:49:57

4 licensing activity of Saul Zaentz would you have 11:50:00

5 reviewed the Decipher license? 11:50:04

6 MS. ESKENAZI: Objection. Calls for 11:50:08

7 speculation. Lacks -- 11:50:08

8 THE WITNESS: I don't -- 11:50:08

9 MS. ESKENAZI: -- foundation. 11:50:10

10 THE WITNESS: Sorry. 11:50:10

11 I don't manage the licensing activity of 11:50:12

12 the Saul Zaentz Company. 11:50:15

13 BY MR. ULIN: 11:50:15

14 Q. You're right, so let me reframe the 11:50:18

15 question. 11:50:20

16 In the course of your reviewing the 11:50:20

17 licensing of the Saul Zaentz Company to determine 11:50:23

18 whether it is appropriate under the Estate's 11:50:25

19 agreements with Saul Zaentz, would you have reviewed 11:50:28

20 the license that Zaentz granted to Decipher? 11:50:31

21 A. I don't believe they sent it to me. 11:50:36

22 Q. And would you have requested -- would you 11:50:37

23 have demanded to see copies of all licenses by 11:50:47

24 Zaentz of Lord of the Rings and Hobbit merchandise? 11:50:52

25 MS. ESKENAZI: Objection. It's vague and 11:50:59

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1	ambiguous. Calls for speculation.	11:51:03
2	THE WITNESS: From time to time I would	11:51:04
3	request details of their agreements with licensees.	11:51:06
4	BY MR. ULIN:	11:51:06
5	Q. Okay. Correspondence between the Estate	11:51:30
6	and the Saul Zaentz Company about video game rights	11:51:33
7	seems to stop around 2000 or 2001, in that general	11:51:41
8	time period.	11:51:47
9	Is that consistent with your recollection?	11:51:49
10	MS. ESKENAZI: Objection. Vague and	11:51:50
11	ambiguous. Assumes facts not in evidence.	11:51:52
12	THE WITNESS: I think there was a point	11:51:54
13	when the live issues between us became different to	11:52:08
14	computer games, if that answers your question.	11:52:12
15	BY MR. ULIN:	11:52:12
16	Q. Not quite. I guess my question is -- and	11:52:16
17	I'm making this representation based on the	11:52:21
18	documents that have been produced in this case --	11:52:23
19	A. Uh-huh.	11:52:26
20	Q. -- by the Estate and also by HarperCollins.	11:52:27
21	Having reviewed those documents,	11:52:29
22	correspondence between the -- the Estate and -- and	11:52:34
23	Zaentz about computer games seems to stop around	11:52:38
24	2000, 2001. There is nothing further.	11:52:41
25	Is that consistent with your understanding	11:52:45

1 of the correspondence between the parties? 11:52:47

2 MS. ESKENAZI: Objection. Assumes facts 11:52:48

3 not in evidence. 11:52:50

4 THE WITNESS: My recollection of the 11:52:51

5 discussion of the question of computer games -- can 11:52:54

6 I ask you to read back something I've said now? 11:53:01

7 Could you possibly read back what I've just said so 11:53:04

8 I get the sentence correct? 11:53:06

9 BY MR. ULIN: 11:53:06

10 Q. Sure. You said that the live issues 11:53:07

11 between Zaentz and the Estate became different from 11:53:09

12 computer games. 11:53:12

13 A. No, the -- the sentence I didn't complete. 11:53:12

14 Q. You said -- I understand. 11:53:18

15 A. I'm trying to complete the sentence but 11:53:19

16 I've forgotten the first part. 11:53:21

17 Q. It might be better if you just start again. 11:53:23

18 I'm sorry. 11:53:25

19 A. Okay. Well -- 11:53:25

20 Q. I don't want to overcomplicate matters. 11:53:26

21 A. No, but what -- but that will mean that 11:53:28

22 I've got to ask you to repeat your question. 11:53:29

23 Q. Sure. I -- my -- my question is, is it 11:53:32

24 consistent with your recollection that the 11:53:34

25 correspondence between the Estate and Saul Zaentz 11:53:35

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1 concerning computer games stopped around 2000 or 11:53:38
2 2001? 11:53:41

3 A. I'm not -- I'm not sure of the date. My 11:53:42
4 recollection is that the last substantive 11:53:45
5 discussions about computer games arose when there 11:53:49
6 was a debate between New Line Cinema and the Saul 11:53:54
7 Zaentz Company about what they, between them, were 11:53:59
8 doing with computer games. 11:54:02

9 Q. Okay. 11:54:02

10 A. I don't -- so I don't know when that was 11:54:04
11 but that was the -- the point at which I recall the 11:54:06
12 conclusion. 11:54:16

13 Q. Okay. And do you recall correspondence or 11:54:18
14 discussions between the Estate and Saul Zaentz 11:54:22
15 concerning Zaentz's rights to license computer games 11:54:31
16 after about 2001 and prior to 2010? 11:54:37

17 A. In that -- in that period, without being 11:54:44
18 specific as to precise dates, I don't think we were 11:54:47
19 in discussion with -- about computer games. 11:54:50

20 Q. And that's because the issues you were 11:54:52
21 discussing with Zaentz in that period, roughly 11:54:54
22 the -- the -- most of the decade of the 2000s did 11:54:58
23 not surround computer games, correct? 11:55:01

24 A. Well, my understanding was that the 11:55:02
25 computer games -- the matter of computer games had 11:55:04

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1 been -- was exactly where it stood in -- in -- at 11:55:10
2 the time of Sierra. 11:55:12
3 Q. Is it your understanding that The Lord of 11:55:14
4 the Rings Online computer game eventually became 11:55:25
5 available online for download only? 11:55:28
6 A. What is The Lord of the Rings Online -- 11:55:33
7 say -- the game that you mentioned, could you repeat 11:55:40
8 the -- 11:55:43
9 Q. Sure. Was it your understanding that The 11:55:43
10 Lord of the Rings Online computer game eventually 11:55:45
11 became available for -- for down line -- excuse me, 11:55:49
12 for download-only online? 11:55:53
13 A. I don't know which game you're referring 11:55:55
14 to, but I'm not aware of any computer games until 11:55:57
15 relatively recently that have been available for 11:56:00
16 purchase by download only. 11:56:02
17 Q. Did you follow the development of 11:56:05
18 downloadable Lord of the Rings games between 2000 11:56:09
19 and 2010? 11:56:14
20 MS. ESKENAZI: Objection. Vague and 11:56:15
21 ambiguous. 11:56:17
22 THE WITNESS: Did you say 11:56:17
23 "downloadable-only"? 11:56:18
24 BY MR. ULIN: 11:56:19
25 Q. Yes. 11:56:19

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1 A. What do you mean by that? 11:56:20

2 Q. Well, actually, what I said was 11:56:21

3 "downloadable." 11:56:22

4 A. What do you mean by that? 11:56:24

5 Q. Available for download on the Internet. 11:56:33

6 A. To be purchased -- 11:56:35

7 Q. Yes. 11:56:36

8 A. -- by download? I was not aware that you 11:56:36

9 could purchase computer games, any of these computer 11:56:38

10 games for download over the Internet. I understood 11:56:40

11 computer games, going back to my point about 11:56:46

12 articles of tangible personal property, that 11:56:48

13 computer games were on physical media, that you had 11:56:51

14 to purchase a physical item, an article of tangible 11:56:58

15 personal property. 11:57:02

16 Q. And did you follow the development or 11:57:04

17 release of Lord of the Rings computer games of any 11:57:08

18 kind between 2001 or 2010? 11:57:12

19 MS. ESKENAZI: Objection. Vague and 11:57:16

20 ambiguous. 11:57:17

21 THE WITNESS: I don't understand what you 11:57:17

22 mean by -- 11:57:18

23 MS. ESKENAZI: Assumes facts not in 11:57:18

24 evidence. 11:57:19

25 BY MR. ULIN: 11:57:19

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1 Q. Did you ask your firm's library, for 11:57:20
2 example, to track press releases or articles about 11:57:23
3 Lord of the Rings or Hobbit-related computer games? 11:57:30
4 MS. ESKENAZI: Objection. Assumes facts 11:57:37
5 not in evidence. 11:57:38
6 THE WITNESS: I did not ask my library to 11:57:38
7 do that. 11:57:40
8 BY MR. ULIN: 11:57:40
9 Q. Did you read trade press or public -- 11:57:40
10 published articles about Lord of the Rings or Hobbit 11:57:42
11 computer games during -- during the period from 2001 11:57:44
12 to 2010? 11:57:47
13 MS. ESKENAZI: Objection. Vague and 11:57:47
14 ambiguous. 11:57:47
15 THE WITNESS: I don't recall. 11:57:47
16 MS. ESKENAZI: Assumes facts not in 11:57:48
17 evidence. 11:57:49
18 THE WITNESS: I don't recall. 11:57:49
19 BY MR. ULIN: 11:57:49
20 Q. As you sit here today, you can't recall -- 11:57:57
21 THE REPORTER: "I don't recall" -- I didn't
22 hear you. "I don't recall" --
23 THE WITNESS: I just said, "I don't
24 recall."
25 BY MR. ULIN:

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1 Q. As you sit here today, you can't recall 11:57:59
2 having read articles about Lord of the Rings or 11:57:59
3 Hobbit-related computer games during the period from 11:58:03
4 2001 to 2010? 11:58:07

5 A. I think I -- 11:58:08

6 MS. ESKENAZI: Objection. Vague and 11:58:09
7 ambiguous. 11:58:10

8 THE WITNESS: I think I may have read an 11:58:10
9 article or two, but I can't be more specific than 11:58:11
10 that. 11:58:14

11 BY MR. ULIN: 11:58:14

12 Q. Did you do anything else to track published 11:58:19
13 articles about Lord of the Rings or Hobbit-related 11:58:21
14 computer games during the period 2001 to 2010? 11:58:25

15 MS. ESKENAZI: Objection. Vague and 11:58:28
16 ambiguous. 11:58:29

17 THE WITNESS: You said did I do anything 11:58:29
18 else? 11:58:30

19 BY MR. ULIN: 11:58:30

20 Q. Yes. 11:58:31

21 A. I'm -- else in addition to what? 11:58:31

22 Q. In addition to reading one or two articles, 11:58:35
23 which is I believe what you said you could recall. 11:58:38

24 A. I was -- I was reading those articles, such 11:58:41
25 articles as I read for information. I wasn't 11:58:43

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1 necessarily reading them to track anything. 11:58:47

2 Q. Okay. Did you do anything like set a 11:58:52

3 Google alert that would inform you of developments 11:58:54

4 concerning Lord of the Rings or Hobbit-related 11:58:58

5 computer games? 11:59:01

6 MS. ESKENAZI: Objection. Vague and 11:59:02

7 ambiguous. 11:59:02

8 MR. ULIN: Not really. 11:59:07

9 THE WITNESS: I had no reason to -- to feel 11:59:08

10 that I had to police what Zaentz was doing with 11:59:09

11 computer games or indeed Warner Bros. 11:59:11

12 MR. PETROCELLI: Move to strike as 11:59:16

13 nonresponsive. 11:59:18

14 MR. ULIN: I'm going to mark Exhibit 13 and 11:59:56

15 put it before the witness. 11:59:58

16 (The document referred to was 12:00:22

17 marked for identification as 12:00:22

18 Exhibit 13 and attached to this 12:00:22

19 deposition.) 12:00:52

20 BY MR. ULIN: 12:00:52

21 Q. Ms. Blackburn, have you seen Exhibit 13 12:00:52

22 before? 12:00:54

23 A. Well, this looks like an e-mail exchange 12:00:54

24 with Fredrica Drotos which -- with me so I -- so I 12:01:01

25 assume I have. 12:01:06

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1 Q. Okay. And do you recall the e-mail 12:01:06
2 exchange with Ms. Drotos that's in Exhibit 13? 12:01:08
3 A. No. 12:01:12
4 Q. Do you recall the Saul Zaentz Company 12:01:12
5 sending you the New York Times review of The Lord of 12:01:13
6 the Rings Online game on or about May the 4th, 2007? 12:01:16
7 A. I don't recall that. But it's evident here 12:01:20
8 that they did. 12:01:24
9 Q. Is this one of the articles that you read 12:01:25
10 about Lord of the Rings-related computer games 12:01:27
11 during the period between 2001 and 2010? 12:01:29
12 A. It may -- 12:01:32
13 MS. ESKENAZI: Objection. Vague and 12:01:33
14 ambiguous. 12:01:34
15 THE WITNESS: It may have been. I can't be 12:01:34
16 specific. 12:01:35
17 Do you want me to read it? 12:01:41
18 BY MR. ULIN: 12:01:41
19 Q. Yes. 12:01:41
20 A. I'm trying to read it as quickly as I can. 12:03:44
21 Q. Fair enough. 12:03:46
22 A. I've read the document. 12:04:29
23 Q. Having reviewed Exhibit 13, does this 12:04:32
24 refresh your recollection that it was one of the one 12:04:34
25 or two articles that you referred to concerning Lord 12:04:36

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1 of the Rings computer games that you read in the 12:04:41
2 2001 to 2010 time period? 12:04:42
3 A. What I recollect in -- amongst other things 12:04:44
4 is the reference in this article to W.H. Auden. So 12:04:47
5 I do recall that this was one of the articles. 12:04:51
6 Q. Okay. And were you aware that The Lord of 12:04:59
7 the Rings Online game was released by Turbine around 12:05:03
8 2007? 12:05:08
9 A. Was I aware? 12:05:09
10 Q. Yes. 12:05:09
11 A. Did you say July? 12:05:17
12 Q. No, I said around -- around 2007. 12:05:18
13 A. All right. Was I aware then? Well, on 12:05:21
14 reading this article, I would have been aware that 12:05:23
15 this game was available because the New York Times 12:05:30
16 was doing a review of it. So I think the answer to 12:05:33
17 your question is yes. 12:05:38
18 Q. Okay. Did you express any concern to the 12:05:43
19 Saul Zaentz Company about the licensing of 12:05:45
20 downloadable Lord of the Rings games? 12:05:48
21 MS. ESKENAZI: Objection. Assumes facts 12:05:50
22 not in evidence. 12:05:53
23 THE WITNESS: This says nothing about 12:05:53
24 down- -- downloadable. 12:05:55
25 BY MR. ULIN: 12:05:55

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1 Q. Did you express any concern to the Saul 12:05:57
2 Zaentz Company about Lord of the Rings computer 12:05:59
3 games played online? 12:06:00
4 MS. ESKENAZI: Objection. Vague and 12:06:05
5 ambiguous. 12:06:06
6 THE WITNESS: I wouldn't have objected to 12:06:09
7 the word "online" in itself because of my 12:06:12
8 understanding of that term. 12:06:13
9 BY MR. ULIN: 12:06:13
10 Q. Did you express any concern that the game 12:06:22
11 might be available online without a physical 12:06:23
12 component? 12:06:25
13 A. No, because I had no reason to assume that 12:06:26
14 it was available. 12:06:31
15 Q. Are you aware of any -- 12:06:33
16 MR. PETROCELLI: Move to strike as 12:06:34
17 nonresponsive everything after the word "no." 12:06:35
18 MS. ESKENAZI: Can we let the witness 12:06:37
19 finish her answer before everybody jumps on her. 12:06:38
20 Then you can jump. 12:06:41
21 MR. ULIN: I'll join in -- in 12:06:44
22 Mr. Petrocelli's objection or motion as it were. 12:06:45
23 THE WITNESS: Right. So are we concl- -- 12:06:52
24 are we finishing with -- because I don't think I had 12:06:53
25 finished what I had said. 12:06:57

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1 BY MR. ULIN: 12:06:57

2 Q. Then -- 12:06:59

3 MS. ESKENAZI: You may complete your 12:07:02

4 answer. 12:07:03

5 BY MR. ULIN: 12:07:03

6 Q. You may -- you may complete your answer. 12:07:04

7 A. Now I can't remember. 12:07:06

8 Q. All right. Let's move on. Let's move on. 12:07:07

9 I think I have one more question. 12:07:08

10 Are you aware of anyone at the Estate, 12:07:10

11 other than yourself or at HarperCollins, who 12:07:11

12 expressed any concern to the Saul Zaentz Company 12:07:16

13 about the possibility that The Lord of the Rings 12:07:19

14 Online game would become available for download only 12:07:23

15 around 2007? 12:07:27

16 A. I don't believe any of the people you have 12:07:29

17 mentioned would have had any reason to think that 12:07:32

18 there was a problem with a game described as online. 12:07:36

19 Q. So your answer is no? 12:07:40

20 MR. PETROCELLI: Move to strike as 12:07:42

21 nonresponsive. 12:07:44

22 BY MR. ULIN: 12:07:44

23 Q. So your answer is no? 12:07:45

24 A. What I -- what I will do, if you're not 12:07:46

25 happy with my answer, is I'd ask you to ask the 12:07:48

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1 question again and I'll try and answer it in a 12:07:50

2 different way. 12:07:53

3 MS. ESKENAZI: Well, just to be clear, you 12:07:56

4 can answer the question any way you want that you 12:07:57

5 believe is true and accurate. And -- and counsel 12:08:00

6 has the right to object or whatever they want. But 12:08:05

7 you're being asked the questions and you get to 12:08:08

8 answer them any way you think is true and accurate. 12:08:10

9 MR. GLICK: Typically, though, if you're 12:08:15

10 asked, "Did you," it's a "yes" or a "no." What -- 12:08:16

11 then if you're asked, "Why did you" or "did you 12:08:19

12 not," well, of course, that would encompass the 12:08:21

13 answer that you're giving. 12:08:23

14 MS. ESKENAZI: That's -- that's not 12:08:25

15 necessarily true. But -- 12:08:27

16 MR. GLICK: It is, actually. 12:08:29

17 MS. ESKENAZI: -- you can answer. 12:08:29

18 MR. GLICK: But that's okay. 12:08:30

19 MR. ULIN: Actually, there is no question 12:08:32

20 pending and I don't want to ask another one. We can 12:08:33

21 break. 12:08:35

22 MS. ESKENAZI: Okay. 12:08:36

23 THE VIDEOGRAPHER: Off the record at 12:09 12:08:36

24 p.m. 12:10:34

25 (At 12:09 p.m., the

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deposition of CATHLEEN BLACKBURN
was adjourned for noon recess.)

///

///

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1 (At 1:20 p.m., the deposition
2 of CATHLEEN BLACKBURN was
3 reconvened.) 13:19:47
4 THE VIDEOGRAPHER: We are back on the 13:19:47
5 record at 1:20 p.m. Counsel may proceed. 13:19:57
6 BY MR. ULIN: 13:19:57
7 Q. Ms. Blackburn, before the break when we 13:20:03
8 talked about The Lord of the Rings Online game, you 13:20:05
9 indicated that your learning about the release of 13:20:09
10 that game didn't give you any concern that Zaentz 13:20:13
11 had licensed games beyond the scope of its rights. 13:20:17
12 Do you recall that? 13:20:19
13 MS. ESKENAZI: Objection. Misstates the 13:20:21
14 testimony. 13:20:22
15 THE WITNESS: I can't recall precisely what 13:20:23
16 we discussed at that point. If you want to read me 13:20:25
17 something. 13:20:29
18 BY MR. ULIN: 13:20:29
19 Q. Well, did it give you any concern that 13:20:30
20 Zaentz had exceeded the scope of its rights when The 13:20:32
21 Lord of the Rings Online game came out in 2007? 13:20:36
22 A. Did what give me? 13:20:39
23 Q. The release of the game. 13:20:40
24 MS. ESKENAZI: Objection. Vague and 13:20:41
25 ambiguous. 13:20:43

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1 THE WITNESS: The release of the game or 13:20:43
2 the game itself? I -- 13:20:48
3 BY MR. ULIN: 13:20:48
4 Q. Let's -- let me phrase -- I like the way 13:20:53
5 you suggested it. 13:20:57
6 Did -- did the -- did The Lord of the Rings 13:20:58
7 Online game, when you learned about it in 2007, give 13:21:03
8 you any concern that Zaentz had exceeded the scope 13:21:07
9 of its licensing rights? 13:21:09
10 A. From what I reviewed in that article, I 13:21:10
11 didn't see anything that indicated that to me. 13:21:13
12 Q. Okay. And that -- is that because it was 13:21:15
13 your understanding that the game was sold with some 13:21:17
14 physical component? 13:21:21
15 A. Correct. Well, no, that the game was a 13:21:22
16 physical object. 13:21:26
17 Q. Okay. 13:21:26
18 A. Not that it was sold with a physical 13:21:28
19 component, though that might have been the case. 13:21:30
20 Q. Is it your position that Zaentz is within 13:21:32
21 its rights to license a computer game if users have 13:21:37
22 to buy a disc before they can play it? 13:21:41
23 MS. ESKENAZI: Objection. Calls for legal 13:21:46
24 conclusion. 13:21:48
25 THE WITNESS: My understanding is that 13:21:50

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1 computer games on physical media discs, cartridges, 13:21:53
2 are within the Zaentz right to grant -- 13:21:57
3 BY MR. ULIN: 13:22:00
4 Q. Okay. 13:22:01
5 A. -- to license. 13:22:01
6 Q. Is that true, in your view, even if users 13:22:02
7 play the game online? 13:22:05
8 A. Well, here we need to be clear what we 13:22:06
9 understand by "online." You may have a different 13:22:11
10 understanding to me. So is it appropriate for me to 13:22:14
11 explain my understanding? 13:22:17
12 Q. Sure. Why don't you explain your 13:22:19
13 understanding. 13:22:21
14 A. My understanding of playing a game online 13:22:21
15 is that you acquire the game, and that with 13:22:24
16 technology as it stands today, it is possible to 13:22:27
17 hook up with other players over a computer network. 13:22:30
18 Q. Okay. So if a player obtains a game by 13:22:35
19 buying a disc, it is -- that's within Zaentz's 13:22:42
20 rights to license, even if the game is played 13:22:46
21 online, correct? 13:22:50
22 A. Correct. 13:22:51
23 Q. Okay. And is it your view that it's also 13:22:53
24 within Zaentz's licensing rights, even if the user 13:22:55
25 can download additional content that's available 13:22:58

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1 online? 13:23:01

2 A. I don't think that it is any part of 13:23:01

3 Zaentz's right to sell any element of computer games 13:23:06

4 by means of download. If there is -- if those extra 13:23:10

5 items are not acquired on disc or on physical media, 13:23:13

6 then they stand outside the ground. 13:23:18

7 Q. Okay. And did you raise that -- no, I 13:23:22

8 don't need to ask that question. 13:23:25

9 By that same token, your view is that 13:23:26

10 Zaentz cannot license a game if it's only available 13:23:45

11 online, correct, only available for download online? 13:23:47

12 A. It's not a question of being available for 13:23:50

13 download. It's a question of how the game is 13:23:52

14 purchased. 13:23:55

15 Q. So to your understanding, if the game is 13:23:57

16 purchased as a disc, then it falls within the scope 13:23:59

17 of Zaentz's licensing rights? 13:24:05

18 A. If the computer game takes the form of 13:24:07

19 physical media, so a disc or a cartridge, and it's 13:24:11

20 acquired in that way, it is available to Zaentz to 13:24:15

21 license. 13:24:19

22 Q. And if the same exact game with the same 13:24:20

23 software, characters are -- that's played the same 13:24:27

24 way, is available only online or is purchased only 13:24:31

25 online, then your position is it's not within 13:24:37

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1	Zaentz's licensing rights; is that correct?	13:24:42
2	MS. ESKENAZI: Objection. Incomplete	13:24:45
3	hypothetical.	13:24:47
4	THE WITNESS: I think the phrase you're	13:24:47
5	using there, purchasing online, is ambiguous.	13:24:48
6	Because I can purchase a game in a box from Amazon.	13:24:54
7	I've purchased it online. It's delivered to my	13:24:57
8	door.	13:25:01
9	BY MR. ULIN:	13:25:02
10	Q. Okay. If the same exact -- so just start	13:25:02
11	again.	13:25:05
12	If the same exact game that a user can	13:25:05
13	purchase on a disc can also be acquired by --	13:25:12
14	purchased by downloading it without acquiring a	13:25:17
15	disc, your position is that the purchase by download	13:25:21
16	is outside of Zaentz's -- the scope of Zaentz's	13:25:26
17	right to license; is that correct?	13:25:29
18	A. If the game is acquired by download without	13:25:31
19	there being a purchase of a physical item, my	13:25:34
20	position is that that stands outside the grounds	13:25:37
21	because then you don't have an article of tangible	13:25:40
22	personal property. And if you don't have an article	13:25:43
23	of tangible personal property, Zaentz has no rights.	13:25:45
24	Q. Where a game is available for purchase as a	13:28:35
25	physical item, is it your position that Zaentz	13:28:38

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1 has -- has the right to license that game even if 13:28:48
2 elements of the game can later be acquired by 13:28:50
3 download only? 13:28:52
4 MS. ESKENAZI: Objection. Incomplete 13:28:53
5 hypothetical. Calls for a legal conclusion. 13:28:56
6 THE WITNESS: I think, in fact, you've 13:28:58
7 asked that question already. 13:28:59
8 BY MR. ULIN: 13:28:59
9 Q. And what is your position? 13:29:01
10 A. What I said it was before. 13:29:02
11 Q. And what -- 13:29:05
12 A. Each -- each element of a computer game, in 13:29:07
13 order to fall within the -- the power of Zaentz to 13:29:11
14 license, must be purchased in the form of physical 13:29:14
15 media, whether it is the first part of the game or 13:29:18
16 an additional element to it to be acquired later on. 13:29:24
17 Q. From time to time you have received 13:29:29
18 inquiries from third parties about obtaining 13:29:47
19 licenses in video games and interactive rights, 13:29:50
20 correct? 13:29:50
21 A. That's correct. 13:29:55
22 Q. And is it fair to say that you've generally 13:29:55
23 referred those inquiries to Zaentz? 13:29:58
24 A. I've probably -- 13:30:00
25 MS. ESKENAZI: Objection. Vague and 13:30:03

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1	ambiguous.	13:30:04
2	BY MR. ULIN:	13:30:04
3	Q. You may answer.	13:30:05
4	A. I have probably involved Zaentz in those --	13:30:06
5	in those issues.	13:30:09
6	Q. Can you think of any examples in which a	13:30:10
7	third party acquired -- inquired about licensing	13:30:12
8	Lord of the Rings or Hobbit video game rights and	13:30:15
9	you have not referred them to Zaentz?	13:30:18
10	MS. ESKENAZI: Objection. Vague and	13:30:21
11	ambiguous.	13:30:22
12	THE WITNESS: I don't know if there are any	13:30:26
13	such instances.	13:30:27
14	BY MR. ULIN:	13:30:28
15	Q. As you sit here today, you can't think of	13:30:28
16	any?	13:30:29
17	A. I can't think of anything specific. I'm	13:30:29
18	not saying I never -- I'm not saying that every	13:30:32
19	inquiry I sent to Zaentz.	13:30:35
20	Q. But you can't recall any that you did not?	13:30:37
21	A. Can I recall any that I did not? I can't	13:30:39
22	recall any specifically.	13:30:45
23	MR. ULIN: Okay. Let's mark Exhibit 14.	13:31:04
24	(The document referred to was	13:31:05
25	marked for identification as	13:31:05

1 Exhibit 14 and attached to this 13:31:05
2 deposition.) 13:31:17
3 BY MR. ULIN: 13:31:17
4 Q. We'll give you the one from the reporter. 13:31:18
5 A. Thank you. 13:31:19
6 Q. Ms. Blackburn, have you seen Exhibit 14 13:31:57
7 before? 13:31:58
8 A. Sorry. I have read an element of it. 13:31:59
9 Q. Do you need more time? 13:32:02
10 A. Please. 13:32:03
11 I'm just trying to work out how these 13:32:47
12 elements interrelate because there's -- it's not 13:32:49
13 immediately apparent. 13:32:53
14 Q. It's my understanding based on your -- 13:33:06
15 well, let me start differently. 13:33:10
16 Do you recognize Exhibit 14 as a fax that 13:33:11
17 you sent to Al Bendich on or about March 23rd, 1999? 13:33:13
18 A. Sorry, I'm -- I'll need you to ask that 13:33:19
19 question again but I'm -- there's something missing 13:33:24
20 from this sequence of correspondence which is -- 13:33:26
21 hold on a minute. 13:33:37
22 Mr. Bray -- 13:33:50
23 MS. ESKENAZI: I'm sorry, is there a 13:33:52
24 question? 13:33:53
25 MR. ULIN: There wasn't. I was going to 13:33:54

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1 let Ms. Blackburn -- 13:33:56

2 THE WITNESS: Sorry. Okay. 13:33:56

3 BY MR. ULIN: 13:33:56

4 Q. So, I'm sorry, Ms. Blackburn, do you 13:33:58

5 recognize this collection of documents in Exhibit 14 13:33:59

6 as a set of documents that you faxed to Al Bendich 13:34:00

7 on or about March 23rd, 1999? 13:34:07

8 A. I -- I -- I can understand now that 13:34:09

9 these -- I couldn't understand the sequence. Yes, 13:34:15

10 these are -- this is a fax I sent to Al Bendich on 13:34:17

11 that date. 13:34:21

12 Q. Okay. And it contains a cover sheet and 13:34:21

13 five pages of correspondence between you and 13:34:26

14 Mr. Anthony Bray of Sun Corporation, correct? 13:34:28

15 A. Yes. 13:34:28

16 Q. Do you recall sending this to Mr. Bendich? 13:34:31

17 A. No. 13:34:33

18 Q. Do you recall your correspondence with 13:34:34

19 Mr. Bray? 13:34:35

20 A. No. 13:34:35

21 Q. Mr. Bray indicates that -- well, you -- 13:34:39

22 indicates and you indicate to Mr. Bendich that 13:34:43

23 Mr. Bray is interested in developing video games on 13:34:46

24 new platforms. 13:34:49

25 Do you see that? 13:34:50

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1 A. Yes. 13:34:54

2 Q. What did you understand "new platforms" to 13:34:56

3 mean? 13:34:59

4 A. Well, the first question is what did I 13:34:59

5 understand "platforms" to mean. I understood 13:35:03

6 "platforms" to mean the physical system into which a 13:35:06

7 game would be put. So things like a personal 13:35:11

8 computer or a dedicated game play- -- computer game 13:35:17

9 playing system like Nintendo or Sega or PlayStation, 13:35:22

10 so the physical equipment, if you like, on which the 13:35:32

11 games would be -- into which the games would be 13:35:34

12 inserted in order to play them. 13:35:36

13 Q. Do you understand platforms to include the 13:35:38

14 Internet? 13:35:40

15 A. I don't think the Internet is a platform. 13:35:43

16 Q. But it was referred to as a platform, for 13:35:45

17 example, on the Sierra On-Line license that you 13:35:47

18 reviewed earlier than this, right? 13:35:49

19 MS. ESKENAZI: Objection. Misstates the 13:35:51

20 documents. 13:35:52

21 MR. ULIN: No, it doesn't. 13:35:52

22 MS. ESKENAZI: Misstates the evidence. 13:35:53

23 THE WITNESS: I don't recollect what that 13:35:58

24 document says. 13:36:00

25 BY MR. ULIN: 13:36:00

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1 Q. Have you reviewed licenses where the 13:36:06
2 Internet is referred to as a platform? 13:36:08
3 A. I don't know. 13:36:10
4 Q. In any event, you refer Mr. Bray to the 13:36:22
5 Saul Zaentz Company for -- to resolve his inquiry, 13:36:37
6 correct? 13:36:37
7 A. Yes. I am -- well, I have two exchanges 13:36:45
8 with him and then I refer him to Al Bendich. 13:36:50
9 Q. And did you ask Mr. Bray what platforms he 13:36:56
10 was talking about when he was talking about 13:37:03
11 developing games for new platforms? 13:37:04
12 A. I don't recall that I did. But, as I say, 13:37:11
13 there's a missing element in this, which is 13:37:19
14 Mr. Bray's fax of 19 March. I don't know what that 13:37:23
15 said. Because what we have here is his -- on, hang 13:37:26
16 on. Sorry. Here's his fax of 19 -- well, there you 13:37:36
17 are. Sorry. Could you repeat the question for me, 13:37:58
18 please? 13:37:58
19 Q. Did you ask Mr. Bray what platforms he was 13:38:06
20 talking about developing when he -- let me start 13:38:08
21 that again. 13:38:12
22 Did you ask Mr. Bray what platforms he was 13:38:12
23 talking about when he asked about developing games 13:38:15
24 for new platforms? 13:38:16
25 A. No. It doesn't appear that I did. 13:38:18

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1 Q. Okay. And turning to Exhibit 9, which was 13:38:21
2 the letter from Ms. Battle attaching the Sierra 13:38:29
3 On-Line license, at page 2 of the license, the 13:38:35
4 definition at paragraph (f) of licensed platforms 13:38:49
5 which we looked at earlier. 13:38:52

6 A. Licensed platforms. 13:38:54

7 Q. And the (f) subparagraph (iii) includes -- 13:38:56
8 includes among licensed platforms, "any online 13:39:03
9 network, including without limitation, the global 13:39:05
10 computer network commonly known as the Internet." 13:39:08

11 Do you see that? 13:39:11

12 A. Yes. 13:39:11

13 Q. Does that refresh -- refresh your 13:39:12
14 recollection that video game developers include the 13:39:13
15 Internet among platforms when they use that term? 13:39:17

16 MS. ESKENAZI: Objection. Calls for 13:39:20
17 speculation. Lacks foundation. 13:39:21

18 BY MR. ULIN: 13:39:21

19 Q. You may answer. 13:39:24

20 MS. ESKENAZI: Assumes facts not in 13:39:25
21 evidence. 13:39:26

22 THE WITNESS: I don't know what a -- a 13:39:26
23 computer games developer would understand by that 13:39:31
24 term. I only know what I understand by it. 13:39:35

25 BY MR. ULIN: 13:39:35

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1 Q. And you -- you testified earlier you likely 13:39:38
2 would have read the Sierra On-Line license when it 13:39:40
3 was sent to you, correct? 13:39:43
4 A. Yeah. 13:39:43
5 Q. Including the definition of licensed 13:39:44
6 platforms, correct? 13:39:47
7 A. Yes. 13:39:47
8 Q. Including the definition of licensed 13:39:48
9 platforms that encompass the Internet and online 13:39:50
10 networks, correct? 13:39:53
11 MS. ESKENAZI: Objection. Misstates the 13:39:54
12 document. 13:39:55
13 MR. ULIN: No, it doesn't. 13:39:56
14 THE WITNESS: Could you repeat the 13:40:01
15 question? 13:40:02
16 BY MR. ULIN: 13:40:02
17 Q. Sure. You would -- you would -- among the 13:40:02
18 things you would have read would be -- 13:40:03
19 A. Yes, I would have read that clause. 13:40:04
20 Q. Right. The clause (iii) in paragraph (f) 13:40:06
21 that includes any online network -- 13:40:07
22 A. Yeah. 13:40:09
23 Q. -- including the Internet -- 13:40:10
24 A. Yes. 13:40:12
25 Q. -- among the platforms? 13:40:13

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1	A. Yes.	13:40:14
2	Q. And you would have read that in -- around	13:40:15
3	November 1998, correct?	13:40:17
4	A. Correct.	13:40:17
5	Q. And that was a few months prior to, about	13:40:20
6	four months prior to receiving the correspondence	13:40:26
7	from Mr. Bray, correct?	13:40:28
8	A. Yes.	13:40:28
9	Q. So at that time you had read at least one	13:40:30
10	license which informed you that "new platforms" is a	13:40:32
11	term that might encompass the Internet, correct?	13:40:35
12	MS. ESKENAZI: Objection. Vague and	13:40:37
13	ambiguous. Calls for speculation. Lacks	13:40:40
14	foundation. Misstates the document.	13:40:42
15	THE WITNESS: When we talked earlier about	13:40:45
16	platforms and computers and we talked about the	13:40:46
17	ability to play a game online, clearly playing the	13:40:49
18	game online over the Internet is an element of how	13:40:55
19	that game is played. But you need -- you need a	13:40:58
20	starting point for that. You need to have your	13:41:01
21	equipment.	13:41:05
22	So, for example, in one Windows -- you know	13:41:06
23	that's a -- that's a PC. You need to have that to	13:41:11
24	get to the online network, assuming that's the sort	13:41:14
25	of game it is that you're playing on your computer.	13:41:19

1 On your computer. 13:41:25

2 BY MR. ULIN: 13:41:26

3 Q. Useful, but not an answer to my question. 13:41:26

4 A. Sorry. 13:41:28

5 Q. All I'm asking is whether when you received 13:41:29

6 the inquiry from Mr. Bray about developing games on 13:41:31

7 new platforms, you had read at least one license 13:41:34

8 four months earlier that referred to platforms as 13:41:38

9 including online networks in the Internet. 13:41:42

10 That's -- that's right, isn't it? 13:41:45

11 MS. ESKENAZI: Objection. Calls for 13:41:46

12 speculation. 13:41:47

13 THE WITNESS: I had -- I had read this 13:41:47

14 document and this paragraph. 13:41:49

15 BY MR. ULIN: 13:41:56

16 Q. Okay. And that did not lead you to believe 13:41:56

17 that Mr. Bray might be talking about developing 13:42:05

18 games for an Internet platform? 13:42:09

19 MS. ESKENAZI: Objection. Asked and 13:42:14

20 answered. 13:42:17

21 You can answer again. 13:42:17

22 THE WITNESS: Well, we're differing, aren't 13:42:18

23 we, on -- on an Internet platform. I'm telling you 13:42:20

24 what I understand to be a platform and the 13:42:24

25 relationship of the Internet to that platform. 13:42:26

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1 BY MR. ULIN: 13:42:26

2 Q. Did you advise Mr. Bray or anyone at Sun 13:42:30

3 that you believed it would be necessary for Sun to 13:42:33

4 obtain a license from the Estate if it intended to 13:42:36

5 develop games that were delivered only online? 13:42:39

6 A. Well, it isn't clear what Mr. Bray wants, 13:42:43

7 so I had no reason to tell him such a thing. At 13:42:46

8 that point, I didn't know enough about what he 13:42:52

9 wanted to do in order to make a comment of that 13:42:54

10 sort. 13:42:58

11 Q. Okay. And you don't recall inquiring? 13:42:58

12 A. I don't recall inquiring. I sent him to Al 13:43:00

13 Bendich so that Al Bendich could do the inquiring. 13:43:07

14 MR. ULIN: Let's mark Exhibit 15. 13:43:52

15 (The document referred to was 13:43:54

16 marked for identification as 13:43:54

17 Exhibit 15 and attached to this 13:43:54

18 deposition.) 13:45:30

19 BY MR. ULIN: 13:45:30

20 Q. Ms. Blackburn, have you seen the documents 13:45:32

21 that comprise Exhibit 15 before? 13:45:33

22 A. Yes. 13:45:36

23 Q. And you recognize this as a fax that you 13:45:37

24 sent to Al Bendich on or about the 3rd of August, 13:45:39

25 2000? 13:45:44

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1 A. Yes. 13:45:44

2 Q. And this document refers to an inquiry from 13:45:47

3 a Mr. Cook, James Cook, of 3DO Company; is that 13:45:50

4 correct? 13:45:58

5 A. I think I would have read it "3DO" but -- 13:45:58

6 Q. "3DO" Company? 13:46:02

7 A. I see it. I agree. 13:46:02

8 Q. First of all, do you recall sending this 13:46:04

9 fax to Mr. Bendich? 13:46:08

10 A. No, I don't. 13:46:11

11 Q. Do you recall receiving an inquiry from 3DO 13:46:11

12 Company in the summer of 2000? 13:46:15

13 A. I don't. 13:46:16

14 Q. Looking at the second page of the fax which 13:46:17

15 incorporates Mr. Cook's letter to you of August the 13:46:25

16 2nd, 2000, I'm looking at the third paragraph of 13:46:31

17 that letter, do you -- are you with me? 13:46:35

18 A. Yes. 13:46:37

19 Q. Mr. Cook asks whether the online rights to 13:46:38

20 Tolkien's trilogy and The Hobbit were, in fact, 13:46:41

21 granted to the Saul Zaentz Company or Zaentz's 13:46:46

22 Tolkien Enterprises or whether the opportunity still 13:46:49

23 exists to license the online rights to such literary 13:46:51

24 works from the Estate of J.R.R. Tolkien. 13:46:54

25 Do you see that? 13:46:57

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1	A. Yes.	13:46:57
2	Q. And you referred that inquiry to Zaentz for	13:47:06
3	response, correct?	13:47:11
4	A. That's right.	13:47:13
5	Q. Did you ask Mr. Cook whether he	13:47:17
6	contemplated developing online games that were	13:47:19
7	downloadable-only?	13:47:21
8	A. I didn't make any -- on -- on the basis of	13:47:22
9	what I have here, I didn't make any inquiry of him	13:47:25
10	as to what he was doing.	13:47:28
11	Q. Did you inform Mr. Cook that the Estate	13:47:29
12	retained rights to computer games that were	13:47:34
13	downloadable-only?	13:47:39
14	A. No, it would not have been my practice to	13:47:40
15	do that.	13:47:42
16	Q. Did you raise that concern with -- with	13:47:42
17	Zaentz?	13:47:45
18	A. No, I would have had no reason to do so at	13:47:46
19	that time. Computer games were computer games on	13:47:49
20	physical media only. It didn't occur to me to	13:47:52
21	speculate on a realm of rights for which there was	13:47:55
22	no technological advance to support.	13:47:59
23	Q. But you don't --	13:48:03
24	MR. PETROCELLI: Move to strike as	13:48:03
25	nonresponsive after the word "no."	13:48:04

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1 BY MR. ULIN: 13:48:04

2 Q. You had read the Sierra On-Line license, 13:48:07

3 correct? 13:48:07

4 A. Correct. 13:48:07

5 Q. And that was a license that contemplated 13:48:12

6 the release of video games by making them available 13:48:13

7 for download online, correct? 13:48:16

8 MS. ESKENAZI: Objection. Misstates the 13:48:19

9 document. Assumes facts not in evidence. Calls for 13:48:20

10 a legal conclusion. Calls for speculation. Lacks 13:48:26

11 foundation. 13:48:29

12 THE WITNESS: There's no definition in that 13:48:29

13 document of what the word "download" means. I'm not 13:48:30

14 sure it had any specific meaning to a person like me 13:48:36

15 in 1998 or 1999. Because we all understand today 13:48:40

16 what "download" means because the technology exists 13:48:46

17 to enable us to acquire something over the Internet 13:48:51

18 without a physical purchase. But it didn't exist 13:48:54

19 then. And, therefore, you know, I don't have 13:48:58

20 perfect foresight. 13:49:00

21 It may be that computer developers had a 13:49:02

22 better understanding of that word. But the tech- -- 13:49:04

23 the technology didn't exist, as I understand it, to 13:49:07

24 download computer games over the Internet without 13:49:11

25 the purchase of a physical object. 13:49:14

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1 BY MR. ULIN: 13:49:17

2 Q. You're aware that the commercial Internet 13:49:17

3 had been available for at least five years by that 13:49:19

4 time? 13:49:22

5 A. I don't know what I'm aware of in relation 13:49:22

6 to the nature of the Internet and what was available 13:49:24

7 and what wasn't. All I know is that since the time 13:49:27

8 that we last talked about computer games with the 13:49:30

9 Saul Zaentz Company, there had been no discussion of 13:49:33

10 any tech- -- technological advance. 13:49:36

11 MR. ULIN: I'm going to mark Exhibit 16. 13:49:58

12 (The document referred to was 13:50:06

13 marked for identification as 13:50:06

14 Exhibit 16 and attached to this 13:50:06

15 deposition.) 13:52:03

16 THE WITNESS: I've read the document. 13:52:03

17 BY MR. ULIN: 13:52:03

18 Q. Okay. Ms. Blackburn, do you recognize 13:52:06

19 Exhibit 16 as e-mail correspondence between you and 13:52:09

20 Laurie Battle at Saul Zaentz in or around June of 13:52:16

21 2006? 13:52:18

22 A. Yes, I do. 13:52:19

23 Q. Do you recall this e-mail exchange? 13:52:20

24 A. No, I don't. 13:52:23

25 Q. The e-mail exchange reflects correspondence 13:52:23

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1 about an inquiry you received from an Ian Pare, 13:52:30
2 P-a-r-e, of Silicon Magic about a license to develop 13:52:36
3 Hobbit-based games for mobile devices; is that 13:52:38
4 correct? 13:52:42
5 A. The correspondence refers to his inquiry. 13:52:42
6 Q. Okay. And turning to the third-to-last 13:52:46
7 page of the document, at the bottom of that page is 13:52:57
8 what appears to be Mr. Pare's original inquiry to 13:53:06
9 you; is that correct? 13:53:11
10 MS. ESKENAZI: Sorry, where are you 13:53:12
11 looking? Can you give us a Bates number? 13:53:14
12 MR. GLICK: 11047. 13:53:29
13 MR. ULIN: I'm sorry, it's my fault. It's 13:53:29
14 11047. I'm looking at our produced version and the 13:53:31
15 one I gave you is your -- is the version you 13:53:34
16 produced back to us. 13:53:36
17 MS. ESKENAZI: I was just confused. 13:53:37
18 MR. ULIN: It's 11047. 13:53:38
19 MS. ESKENAZI: Got it. Now, I just wanted 13:53:40
20 a number. 13:53:42
21 THE WITNESS: I'm sorry, I've forgotten the 13:53:46
22 question. 13:53:48
23 BY MR. ULIN: 13:53:48
24 Q. Sure. The e-mail on page 11047 appears to 13:53:49
25 be Mr. Pare's original inquiry to you; is that 13:53:55

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1 correct? 13:53:55

2 A. That seems right. 13:53:58

3 Q. Okay. And Mr. Pare refers to his company 13:53:59

4 as, "a small development company, writing games 13:54:06

5 predominantly for mobile devices, such as cell 13:54:08

6 phones and PDAs," correct? 13:54:11

7 A. Yeah. 13:54:11

8 Q. And asks about an opportunity to develop an 13:54:13

9 adventure game based on The Hobbit, correct? 13:54:17

10 A. Correct. 13:54:17

11 Q. And in the e-mail on the preceding page you 13:54:21

12 refer Mr. Pare to Tolkien Enterprises, Saul Zaentz 13:54:25

13 for resolution of his inquiry, correct? 13:54:30

14 A. I suggest that he contacts them. 13:54:36

15 Q. Okay. And you indicate in your first 13:54:37

16 e-mail to Ms. Battle, which is two e-mails above 13:54:49

17 that one on the same -- 13:54:49

18 A. "Hi Laurie, long time no speak"? 13:54:53

19 Q. Exactly. 13:54:55

20 A. Yeah. 13:54:55

21 Q. That it seems to you that the rights in 13:54:56

22 which Silicon Magic is interested, "would certainly 13:54:57

23 fall on your side of the line," meaning the Zaentz 13:55:00

24 side of the line, correct? 13:55:03

25 A. Yeah. 13:55:03

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1 Q. Okay. So the position you're taking here 13:55:04
2 is, if I understand it correctly, that Hobbit cell 13:55:08
3 phone games are one in which Zaentz owns the rights, 13:55:11
4 correct? 13:55:11

5 A. Incorrect. 13:55:15

6 Q. Okay. What -- what is the position you're 13:55:16
7 taking? 13:55:18

8 A. I'm not taking a position. I'm trying to 13:55:21
9 answer questions. Is there a question? 13:55:24

10 Q. Yes. I was asking you what position you 13:55:30
11 were taking with respect to the rights to 13:55:31
12 Hobbit-related cell phone games. 13:55:34

13 A. Oh, I understand. They -- they are not -- 13:55:36
14 they're not theirs, they're not for Zaentz to 13:55:39
15 license if the nature of the technology means that 13:55:43
16 they do not get on to a mobile phone by means of a 13:55:45
17 purchase of a physical object. 13:55:51

18 Q. Okay. And is it your understanding that 13:55:54
19 cell phones don't accommodate discs and physical 13:56:02
20 objects? 13:56:06

21 MS. ESKENAZI: Objection. Vague and 13:56:08
22 ambiguous. 13:56:12

23 THE WITNESS: Did you say "accommodated"? 13:56:12

24 BY MR. ULIN: 13:56:14

25 Q. Let me ask the question differently. 13:56:15

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1 A cell phone game would necessarily be one 13:56:17
2 that's digitally distributed, correct? 13:56:19
3 MS. ESKENAZI: Objection. Vague and 13:56:22
4 ambiguous. 13:56:23
5 THE WITNESS: I don't -- I don't know that 13:56:23
6 that is necessarily the case. But I think today 13:56:24
7 that is commonly the situation, that you acquire the 13:56:27
8 game to your mobile phone -- 13:56:32
9 BY MR. ULIN: 13:56:33
10 Q. And -- 13:56:34
11 A. -- out of the ether. 13:56:34
12 Q. And is it your -- was it your understanding 13:56:35
13 in 2006 that the situation was different? 13:56:38
14 A. Well, I don't know whether the technology 13:56:42
15 was -- was well-known at that point. I don't recall 13:56:44
16 when it became possible to play games on a mobile 13:56:48
17 phone. 13:56:51
18 Q. Were you aware in 2006 of any games for 13:56:51
19 mobile phones that were sold in -- on -- were sold 13:56:58
20 on discs or some other physical storage medium? 13:57:05
21 A. I didn't -- 13:57:09
22 MS. ESKENAZI: Objection. Vague and 13:57:09
23 ambiguous. 13:57:10
24 THE WITNESS: I -- I don't know what 13:57:10
25 knowledge I had at that time about games on mobile 13:57:13

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1 phones. 13:57:15

2 BY MR. ULIN: 13:57:15

3 Q. Did you indicate to Mr. Pare that the 13:57:16

4 rights about which he was inquiring might belong to 13:57:23

5 the Estate? 13:57:28

6 MS. ESKENAZI: Objection. Vague and 13:57:32

7 ambiguous. 13:57:32

8 THE WITNESS: I don't -- I don't respond to 13:57:32

9 him on that point at all. 13:57:33

10 BY MR. ULIN: 13:57:33

11 Q. Did you indicate to Mr. Pare that if he was 13:57:35

12 developing cell phone games for which there was no 13:57:43

13 physical medium, that he -- his inquiry should be 13:57:45

14 directed to you or to the Estate? 13:57:49

15 A. Well, his -- his -- his inquiry is -- is 13:57:51

16 very vague. So I had no reason to treat it as 13:57:55

17 specific and highlight that issue and tell him that 13:57:59

18 those -- that -- that that matter would be for the 13:58:02

19 Estate. 13:58:05

20 I simply referred him to Zaentz because, as 13:58:05

21 I say in the e-mail I sent to him, games -- rights 13:58:08

22 in this area at that time were administered by 13:58:13

23 Tolkien Enterprises. They would do the 13:58:17

24 investigation. They would analyze what the 13:58:18

25 applicant wanted specifically so they could see 13:58:22

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1 whether that cut across their legitimate rights. 13:58:24

2 Q. But you did not raise with Mr. Pare your 13:58:29

3 view that a digitally-delivered cell phone game 13:58:35

4 would be within the Estate's rights? 13:58:39

5 A. I wouldn't share with an applicant of this 13:58:41

6 sort the -- the precise division of rights between 13:58:44

7 the Saul Zaentz Company and -- and the Tolkien 13:58:49

8 Estate -- 13:58:53

9 Q. Did you raise that issue -- I'm sorry, go 13:58:53

10 ahead. 13:58:58

11 A. -- against a very vague background. 13:58:58

12 Q. Did you raise that issue with Ms. Battle? 13:59:01

13 A. What issue? 13:59:03

14 Q. Your view that digitally-delivered cell 13:59:05

15 phone games were only for the Estate to license? 13:59:09

16 MS. ESKENAZI: Do -- objection. Do you 13:59:14

17 mean in connection with this document? 13:59:14

18 MR. ULIN: Yes, at this -- at this time in 13:59:16

19 2006 in connection with the inquiry from Silicon 13:59:17

20 Magic. 13:59:22

21 THE WITNESS: It doesn't appear from the 13:59:22

22 correspondence that I had with Laurie that I had any 13:59:23

23 detailed discussion of what Mr. Pare was wanting. 13:59:26

24 BY MR. ULIN: 13:59:28

25 Q. Do you recall any communication with anyone 13:59:28

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1 at Zaentz about the Silicon Magic request outside 13:59:29
2 the scope of this e-mail -- 13:59:32
3 A. No. 13:59:35
4 Q. -- traffic? 13:59:35
5 A. No. 13:59:35
6 Q. With respect to the three inquiries that we 14:00:29
7 just reviewed, let's talk about Mr. Bray and Sun 14:00:37
8 first. 14:00:40
9 Did you have any communications with 14:00:40
10 Mr. Bray outside of what's reflected in the 14:00:42
11 correspondence in your -- in your fax to Al Bendich 14:00:45
12 that's in Exhibit 14? 14:00:50
13 A. I don't recall. 14:00:51
14 Q. As you're sitting here today, you don't 14:00:51
15 recall any communication with him -- 14:00:54
16 A. No, I don't. 14:00:55
17 Q. -- other than what's in that fax? 14:00:55
18 A. No, I don't. 14:00:57
19 Q. Okay. And with respect to the 14:00:58
20 communication you had with 3DO Company, did you have 14:01:06
21 any -- any conversations or other communication with 14:01:10
22 3DO outside of the correspondence that's reflected 14:01:14
23 in Exhibit 15? 14:01:18
24 A. I don't recall. 14:01:19
25 Q. As you sit here today, you don't -- you do 14:01:20

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1 not recall any other communications with 3DO except 14:01:21
2 what's in 3- -- Exhibit 15, correct? 14:01:24
3 A. No, I don't. 14:01:26
4 Q. And then, finally, with respect to your 14:01:28
5 communications with Mr. Pare of Silicon Magic, do 14:01:34
6 you recall any communications or -- or conversations 14:01:39
7 with Mr. Pare outside of the correspondence that's 14:01:43
8 reflected in Exhibit 16? 14:01:47
9 A. I think you asked me that question and I 14:01:49
10 answered it before you went back to those two. But, 14:01:51
11 no. 14:01:51
12 Q. Okay. So as you sit here today, you don't 14:01:55
13 recall any -- 14:01:57
14 A. I don't recall. 14:01:58
15 Q. -- other communications? 14:01:58
16 A. I don't. 14:01:59
17 Q. The Estate has taken the position in this 14:02:00
18 lawsuit that Zaentz is not entitled to license Lord 14:02:17
19 of the Rings or Hobbit-related trademarks in 14:02:23
20 connection with services. 14:02:24
21 Are you aware of that? 14:02:25
22 A. I am aware of that. 14:02:25
23 Q. Okay.
24 MR. ULIN: Mark Exhibit 17.
25 (The document referred to was

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1 marked for identification as
2 Exhibit 17 and attached to this
3 deposition.) 14:03:34
4 THE WITNESS: Can I just make the point 14:03:34
5 that paragraph 6 seems to have been chopped off. 14:03:35
6 MR. ULIN: Not on the copy that I'm looking 14:03:43
7 at. 14:03:45
8 MS. ESKENAZI: Oh, yeah. 14:03:53
9 MR. ULIN: Okay. I can tell you that I'm 14:04:02
10 not asking about paragraph 6. I'm happy to 14:04:03
11 substitute it. 14:04:05
12 MS. ESKENAZI: That's good because we don't 14:04:06
13 have a paragraph 6. We just see a 6 or part of a 6. 14:04:08
14 MR. ULIN: Okay. 6 carries over -- 14:04:17
15 MR. GLICK: It's fine on the next -- 14:04:17
16 MR. ULIN: Okay. Yeah. I mean, it doesn't 14:04:20
17 matter. I'm happy to -- 14:04:20
18 MR. GLICK: (Inaudible). 14:04:20
19 MR. ULIN: Yes, I know that. That's 14:04:28
20 exactly what I'm going to ask about. But that's the 14:04:28
21 reason I don't want to give it to her. 14:04:28
22 MR. GLICK: Maybe we can just -- on a break 14:04:28
23 just -- 14:04:28
24 MR. ULIN: That's fine. 14:05:22
25 Q. Ms. Blackburn, have you seen Exhibit 18 14:05:22

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1 before -- I'm sorry. I don't want to misspeak on 14:05:25
2 the document. 14:05:25
3 MS. ESKENAZI: 17. 14:05:25
4 MR. ULIN: 17. 14:05:25
5 Q. Exhibit 17 before? 14:05:26
6 A. I don't recall this document. 14:05:27
7 Q. This document purports to be an affidavit 14:05:31
8 by Frank Richard Williamson. 14:05:40
9 Do you see that? 14:05:43
10 A. Yes. 14:05:43
11 Q. And that's Dick Williamson; is that 14:05:44
12 correct? 14:05:44
13 A. That's Dick Williamson, yes. 14:05:47
14 Q. The same -- 14:05:48
15 A. Yes. 14:05:49
16 Q. -- attorney who handled the Tolkien Estate 14:05:49
17 matters before you did? 14:05:51
18 A. That's correct. 14:05:52
19 Q. And with whom you worked at Manches in 14:05:52
20 connection with Tolkien Estate matters? 14:05:56
21 A. At Morrell Peel & Gamlen. 14:05:57
22 Q. I'm sorry, at Morrell Peel. 14:05:59
23 Let's -- if we may, let's substitute this 14:06:00
24 document for Exhibit 17 at the appropriate time. It 14:06:05
25 has a complete paragraph 6. 14:06:10

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1 MR. GLICK: Well, let's do it now. 14:06:13
2 MR. ULIN: We can do that, sure. 14:06:14
3 THE WITNESS: So I give back this 17? 14:06:16
4 MR. ULIN: Yes, why don't we do that. 14:06:19
5 MR. GLICK: You want to mark it 17-A and 14:06:19
6 then the record will be good. 14:06:20
7 MS. ESKENAZI: Yes, that's a good idea.
8 MR. ULIN: That's a good idea.
9 MS. ESKENAZI: 17-A.
10 MR. ULIN: It's all good. That makes
11 sense.
12 (The document referred to was
13 marked for identification as
14 Exhibit 17-A and attached to this
15 deposition.)
16 BY MR. ULIN:
17 Q. So 17-A is a complete version of the 14:06:32
18 Williamson affidavit, which is Exhibit 17. 14:06:36
19 A. I've read it. Well -- sorry. You were 14:06:44
20 writing. I've read it. 14:06:51
21 Q. Fair enough. And your testimony is you 14:06:53
22 have not seen this before? 14:06:55
23 A. I don't recall seeing this before. 14:06:55
24 Q. You don't recall reviewing it at the time 14:06:57
25 you took over the Tolkien work at Morrell Peel? 14:06:58

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1 A. I don't recall reviewing it. 14:07:04

2 Q. Okay. At -- at the second page of 14:07:09

3 Exhibit 17-A -- first of all, at the bottom 14:07:12

4 right-hand corner there is a signature. 14:07:15

5 Is that Mr. Williamson's signature? 14:07:18

6 MS. ESKENAZI: Objection. Lacks 14:07:20

7 foundation. 14:07:24

8 THE WITNESS: It appears to be 14:07:24

9 Mr. Williamson's signature. It resembles his 14:07:25

10 signature. 14:07:28

11 BY MR. ULIN: 14:07:28

12 Q. You recognize that from having worked for 14:07:30

13 Mr. Williamson -- 14:07:32

14 A. Yes. 14:07:32

15 Q. -- for so many years? 14:07:33

16 A. Yes. 14:07:33

17 Q. At paragraph 7 of this document, 14:07:34

18 Mr. William- -- 14:07:36

19 A. Yes. 14:07:37

20 Q. -- Mr. Williamson refers -- I just caution 14:07:38

21 you, we need to avoid talking over one another. 14:07:40

22 A. So sorry. 14:07:42

23 Q. Mr. Williamson refers to an agreement 14:07:43

24 between United Artists Corporation and the Saul 14:07:46

25 Zaentz production company. 14:07:47

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1 Do you see that? 14:07:49

2 A. Yes. 14:07:49

3 Q. And he refers to that agreement being one 14:07:51

4 where Zaentz agreed for a substantial sum to acquire 14:07:53

5 all of the rights of United Artists, correct? 14:07:59

6 A. Yes. 14:07:59

7 Q. Which include the production of motion 14:08:03

8 picture, theatrical, stage and music entertainment, 14:08:07

9 incorporating characters, places and events created 14:08:10

10 by Professor Tolkien in The Hobbit and The Lord of 14:08:12

11 the Rings. 14:08:15

12 Do you see that? 14:08:15

13 A. Yes. 14:08:16

14 Q. And then also the right to license others 14:08:16

15 to use the Tolkien characters for merchandise or in 14:08:18

16 association with services. 14:08:21

17 Do you see that? 14:08:22

18 A. I do see that. 14:08:23

19 Q. Okay. Did you have occasion to discuss 14:08:26

20 with Mr. Williamson the Saul Zaentz Company's right 14:08:28

21 to license others to use the Tolkien characters for 14:08:35

22 merchandise or in association with services? 14:08:40

23 MS. ESKENAZI: Objection. Calls for 14:08:42

24 attorney-client privileged information. I'll 14:08:44

25 instruct. 14:08:46

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1 MR. GLICK: You're instructing her not to 14:08:50
2 answer that? 14:08:51
3 MS. ESKENAZI: Instructing her not to 14:08:52
4 answer. 14:08:53
5 MR. GLICK: And therefore you will not put 14:08:53
6 such evidence in at trial, having refused -- 14:08:55
7 MS. ESKENAZI: I'm instructing her not to 14:08:56
8 answer this question about which invades the 14:08:58
9 attorney-client privilege. 14:09:00
10 MR. GLICK: And I'm going to state again 14:09:01
11 for the record that we will certainly take the 14:09:03
12 position that that seals that forever, because we're 14:09:06
13 here on her deposition today. 14:09:08
14 BY MR. ULIN: 14:09:08
15 Q. And you're accepting your attorney's 14:09:13
16 instruction not to answer? 14:09:14
17 A. I am. 14:09:15
18 Q. The declaration -- sorry, the affidavit 14:09:21
19 further indicates that the aforesaid children have 14:09:24
20 consented to the assignment of rights, including the 14:09:28
21 right to license the Tolkien characters in 14:09:32
22 association with services to the Saul Zaentz 14:09:34
23 Company. 14:09:37
24 Do you see that? 14:09:37
25 A. The sentence says that the four Tolkien 14:09:37

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1 children -- well, it doesn't say the four Tol- -- 14:09:40
2 the four children -- the four said children have 14:09:44
3 consented to the assignment of rights between United 14:09:46
4 Artists and the Saul Zaentz production company. 14:09:51
5 Q. And Mr. Williamson swore this document to a 14:09:53
6 notary public on or about the 2nd of 14:09:57
7 December 1977 -- 14:10:00
8 MS. ESKENAZI: Objection. Calls for 14:10:01
9 speculation. 14:10:01
10 BY MR. ULIN: 14:10:01
11 Q. -- correct? 14:10:02
12 MS. ESKENAZI: Lacks foundation. 14:10:03
13 THE WITNESS: I don't -- I don't know. I 14:10:06
14 can only -- I can only draw conclusions from the 14:10:08
15 fact that that is said on the document. But I don't 14:10:13
16 know. I wasn't there in 1977. 14:10:16
17 BY MR. ULIN: 14:10:17
18 Q. You don't -- you don't have any reason to 14:10:17
19 doubt that Mr. Williamson swore this to a notary in 14:10:19
20 1977 as the seal indicates on this document, do you? 14:10:22
21 MS. ESKENAZI: Objection. Calls for 14:10:24
22 speculation. Lacks foundation. 14:10:25
23 BY MR. ULIN: 14:10:25
24 Q. You may answer. 14:10:27
25 A. I don't know the circumstances. I don't 14:10:28

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1 know. All I can -- all I can do, as you do, is read 14:10:31
2 this document. 14:10:33
3 Q. Fair enough. And -- and you did not 14:10:34
4 consider this document in connection with the 14:10:38
5 Estate's position that Saul Zaentz Company lacks the 14:10:41
6 right to license services? 14:10:46
7 MS. ESKENAZI: Objection. Misstates the 14:10:47
8 evidence. 14:10:49
9 BY MR. ULIN: 14:10:49
10 Q. Is that correct? 14:10:49
11 A. I don't recall this document. I have 14:10:50
12 always drawn my understanding of what rights the 14:10:51
13 Saul Zaentz Company has in relation to these 14:10:57
14 trademarks from -- from the 1969 merchandising 14:10:59
15 agreement. 14:11:03
16 MR. ULIN: Let's mark Exhibit 18. 14:11:05
17 (The document referred to was 14:11:06
18 marked for identification as 14:11:06
19 Exhibit 18 and attached to this 14:11:06
20 deposition.) 14:11:45
21 BY MR. ULIN: 14:11:45
22 Q. You're certainly free to look at the entire 14:11:46
23 document, Ms. Blackburn. I am only going to be 14:11:47
24 asking you questions about the paragraph on the 14:11:51
25 third page of this document, Plaintiffs' 1412. It 14:11:55

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1 begins underneath the Roman numeral III. 14:12:02

2 A. I've looked at the document. 14:15:42

3 Q. Okay. Ms. Blackburn, have you seen Exhibit 14:15:44

4 18 before? 14:15:46

5 A. Yes, I have. 14:15:46

6 Q. Okay. And is this one of the documents 14:15:48

7 that you received from Mr. Williamson when you took 14:15:52

8 over the work for the Estate at Morrell Peel? 14:15:56

9 MS. ESKENAZI: Objection. Vague and 14:16:00

10 ambiguous. 14:16:02

11 THE WITNESS: I didn't receive documents 14:16:02

12 from Mr. Williamson. The Tolkien Estate files were 14:16:03

13 in the custody of the firm. 14:16:07

14 BY MR. ULIN: 14:16:07

15 Q. Okay. Is this a document that you reviewed 14:16:10

16 at or around the time you took over the Tolkien 14:16:11

17 Estate work for Mr. Williamson? 14:16:13

18 A. I can't be precise as to when I reviewed 14:16:15

19 it, but I will have reviewed this document as part 14:16:18

20 of my becoming familiar with the background. 14:16:20

21 Q. Okay. And is this also a document that you 14:16:23

22 reviewed with counsel in preparation for this 14:16:26

23 deposition? 14:16:28

24 MS. ESKENAZI: Objection. Calls for 14:16:28

25 attorney-client privileged information. 14:16:32

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1 MR. ULIN: Are you instructing your witness 14:16:35
2 not to answer? 14:16:37
3 MS. ESKENAZI: Yes. 14:16:38
4 BY MR. ULIN: 14:16:38
5 Q. And are you accepting your counsel's 14:16:39
6 instruction? 14:16:40
7 A. I am. 14:16:40
8 Q. Fair enough. This document reflects an 14:16:41
9 agreement among Saul Zaentz Company, the Estate of 14:16:48
10 J.R.R. Tolkien and the George Allen & Unwin 14:16:56
11 publishing company, correct? 14:17:02
12 MS. ESKENAZI: Objection. Document speaks 14:17:02
13 for itself. 14:17:04
14 BY MR. ULIN: 14:17:04
15 Q. You may answer. 14:17:04
16 A. This document reflects -- is intended to 14:17:06
17 reflect the understanding between those parties, the 14:17:15
18 Saul Zaentz Company and their -- and Elan 14:17:18
19 Merchandising, Inc. 14:17:20
20 Q. Okay. And at the final page of the 14:17:22
21 document, it's signed by representatives of all 14:17:25
22 three of those parties, correct? 14:17:28
23 A. I recognize the signatures for Allen & 14:17:32
24 Unwin and the Estate of J.R.R. Tolkien and the 14:17:36
25 signature for -- for the Saul Zaentz Company is Saul 14:17:40

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1 Zaentz. Never seen that signature before. 14:17:46

2 Q. At -- 14:17:48

3 A. Sorry, I should say I don't think I have 14:17:51

4 ever seen that signature before. 14:17:53

5 Q. At the third -- fair enough. 14:17:54

6 At the third page of the document just 14:17:58

7 below the Roman numeral III -- 14:18:00

8 A. Yeah. 14:18:02

9 Q. -- the document indicates: 14:18:02

10 "We hereby grant to you the 14:18:04

11 exclusive right to use the name 14:18:05

12 Tolkien Enterprises as the tradename 14:18:07

13 to be used by your affiliate Elan," 14:18:10

14 E-l-a-n, "Merchandising, Inc. in 14:18:14

15 connection with its efforts to pursue 14:18:15

16 the rights owned by you under 14:18:16

17 contracts C and D to use and/or 14:18:19

18 license others to use as marks for 14:18:23

19 merchandise or services, the names" -- 14:18:26

20 et cetera -- "made famous by J.R.R. 14:18:30

21 Tolkien in The Hobbit and The Lord of 14:18:33

22 the Rings trilogy." 14:18:35

23 Do you see that? 14:18:37

24 A. I can see the first -- I can read that 14:18:37

25 paragraph. 14:18:39

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1 Q. Okay. Did you consider this document in 14:18:39
2 connection with the Estate's position that Zaentz is 14:18:46
3 not entitled to license the trademarks in The Lord 14:18:55
4 of the Rings or The Hobbit for services? 14:19:00

5 A. I'm sorry, can you give me the beginning of 14:19:04
6 your question again? 14:19:06

7 Q. Sure. Did you consider this document in 14:19:07
8 connection with forming the Estate's position that 14:19:08
9 Zaentz is not entitled to license trademarks in The 14:19:11
10 Lord of the Rings or The Hobbit for services or 14:19:16
11 service marks for them? 14:19:18

12 A. I would have considered this document as 14:19:19
13 part of the contractual framework governing 14:19:22
14 merchandising and use of the Estate's trademarks. 14:19:25

15 Q. And reached the conclusion that Zaentz is 14:19:32
16 not authorized to license service marks or 14:19:34
17 trademarks for services notwithstanding the language 14:19:37
18 of this agreement; is that correct? 14:19:40

19 A. Well, what -- what I think is important 14:19:42
20 about this agreement is -- is -- is its subject 14:19:43
21 matter. The -- the purpose of this -- the main 14:19:47
22 purpose of this agreement was to grant the right to 14:19:50
23 the Saul Zaentz Company and its affiliate the right 14:19:55
24 to call itself or call themselves Tolkien 14:19:58
25 Enterprises -- 14:20:02

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1 Q. Okay. But do you recog- -- 14:20:02

2 A. -- in connection with that activity. 14:20:06

3 Q. You recognize that according to the 14:20:07

4 language on paragraph 3, that right is granted in 14:20:10

5 connection with the Saul Zaentz Company's right to 14:20:13

6 use the Tolkien marks for merchandise or services, 14:20:16

7 correct? 14:20:16

8 MS. ESKENAZI: Objection. Misstates the 14:20:22

9 document. 14:20:22

10 BY MR. ULIN: 14:20:22

11 Q. You may answer. 14:20:23

12 MS. ESKENAZI: Misstates the document. 14:20:24

13 THE WITNESS: I can see that in line 6 of 14:20:25

14 this paragraph, there's a reference to using marks 14:20:30

15 for merchandise or services. However, I also note 14:20:36

16 in paragraph Roman III that what is in article III 14:20:41

17 does not -- is not to expand -- add to or expand the 14:20:48

18 rights granted under contract C and D. And 14:20:53

19 contract -- trying to work out which one -- which 14:21:03

20 one is D. A, B -- yeah, contract D is the 14:21:06

21 merchandising agreement. 14:21:17

22 So whatever -- in construing this document, 14:21:19

23 whatever -- irrespective of the reference to 14:21:23

24 merchandise or services, what -- it's clear from 14:21:27

25 this section of the agreement that the parties are 14:21:31

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1 not changing in any way what the merchandising 14:21:36
2 agreements themselves say. 14:21:39
3 BY MR. ULIN: 14:21:40
4 Q. And irrespective of that language, you 14:21:40
5 would acknowledge that this document constitutes the 14:21:44
6 parties to contract C and D describing the rights 14:21:48
7 granted under those contracts as including Zaentz's 14:21:53
8 right to use the Tolkien marks for services, 14:21:56
9 correct? 14:21:56
10 MS. ESKENAZI: Objection. Vague and 14:22:00
11 ambiguous. 14:22:00
12 THE WITNESS: No, I don't -- 14:22:00
13 MS. ESKENAZI: Misstates the document. 14:22:01
14 THE WITNESS: It doesn't say that. It's an 14:22:02
15 incorrect paraphrase of what the merchandising 14:22:08
16 agreements say. 14:22:11
17 MR. ULIN: Let's go off the record. 14:22:12
18 THE VIDEOGRAPHER: This is the end of media 14:22:15
19 number 3. Off the record at 2:23 p.m. 14:22:17
20 (Brief recess.) 14:22:23
21 THE VIDEOGRAPHER: We're back on the record 14:43:55
22 at 2:45 p.m. This is the beginning of media number 14:44:08
23 4. Counsel may proceed. 14:44:12
24 MR. ULIN: I'd like to mark Exhibit 19. 14:44:15
25 (The document referred to was 14:44:35

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1 marked for identification as 14:44:35
2 Exhibit 19 and attached to this 14:44:35
3 deposition.) 14:45:04
4 BY MR. ULIN: 14:45:04
5 Q. Ms. Blackburn, have you seen Exhibit 19 14:45:05
6 before? 14:45:07
7 A. I don't recall this document. 14:45:07
8 Q. It purports to be an e-mail from Ms. Battle 14:45:14
9 to David Brawn at HarperCollins dated on November 14:45:18
10 the 9th, 2001. 14:45:22
11 Do you see that? 14:45:22
12 A. I've got an e-mail from Laurie Battle to 14:45:23
13 David Brawn on 8 November and David Brawn's -- 14:45:29
14 Q. I'm sorry, I got it backwards. 14:45:34
15 A. -- reply. 14:45:34
16 Q. It's from David Brawn to Laurie Battle. 14:45:35
17 A. Yeah, well, there's one each. 14:45:38
18 Q. Right. And you are copied on Mr. Brawn's 14:45:40
19 e-mail to Ms. Battle. In fact, you're copied on 14:45:43
20 both e-mails, correct? 14:45:46
21 A. Yes, I am. 14:45:52
22 Q. Do you recall receiving these e-mails on or 14:45:52
23 about November the 9th, 2001? 14:45:54
24 A. I don't -- I don't actually recall them. 14:45:55
25 Q. But you don't have any reason to doubt that 14:45:59

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1	you received them, do you?	14:46:00
2	A. No.	14:46:00
3	Q. In the first paragraph of Mr. Brawn's	14:46:01
4	e-mail --	14:46:03
5	A. Shall I read this?	14:46:04
6	Q. Oh, I'm sorry, I thought you had already.	14:46:05
7	A. No. No.	14:46:07
8	Q. Okay. And I'm only going to be asking you	14:46:08
9	about the first paragraph. In fact, only about	14:46:22
10	the -- well, actually, only about the first	14:46:27
11	paragraph of this first e-mail. Anything more,	14:46:29
12	you're welcome to read. I can save you the trouble.	14:47:22
13	A. It's just, this relates to matters which	14:47:25
14	live in a remote part of my memory.	14:47:29
15	Q. I would say more or less anything that	14:47:38
16	happened in 2001 lives in a remote part of my	14:47:40
17	memory, if at all.	14:47:43
18	A. I've looked at it now.	14:47:58
19	Q. Very good. In the first paragraph of	14:48:00
20	Mr. Brawn's e-mail from November the 9th, he	14:48:03
21	indicates that:	14:48:07
22	"We" -- apparently meaning	14:48:07
23	HarperCollins -- "operate under a	14:48:13
24	series of permissions guidelines drawn	14:48:15
25	up by the Tolkien Estate in the	14:48:17

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1 mid-1990s specifically for 14:48:19
2 HarperCollins' use which seek to 14:48:20
3 clarify for practical purposes what 14:48:21
4 can and cannot be granted and where 14:48:23
5 consultation is required with the 14:48:26
6 Estate." 14:48:27

7 Do you see that? 14:48:27

8 A. "Where consultation is required with the 14:48:28
9 Estate and/or with Tolkien Enterprises." 14:48:30

10 Q. Fair -- fair enough. Do you see that? 14:48:32

11 A. I do see that. 14:48:34

12 Q. Are you familiar with the permissions 14:48:35
13 guidelines that Mr. Brawn is referring to? 14:48:38

14 MS. ESKENAZI: I'm going to let the witness 14:48:41
15 answer that question, but I just want to forewarn 14:48:42
16 counsel that he may be getting into an area of 14:48:48
17 attorney-client communication, work product 14:48:51
18 privilege. 14:48:53

19 But you can answer that one question. It's 14:48:54
20 a "yes" or "no" question. 14:48:58

21 THE WITNESS: And I'm sorry, I'm going to 14:48:59
22 have to ask you -- ask you to ask it again. 14:49:00

23 BY MR. ULIN: 14:49:00

24 Q. Sure. Are you familiar with the 14:49:02
25 permissions guidelines that Mr. Brawn is referring 14:49:03

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1 to? 14:49:05

2 A. Yes, I am. 14:49:05

3 Q. Is that a written document? 14:49:06

4 MS. ESKENAZI: You can answer that question 14:49:09

5 as well. 14:49:09

6 THE WITNESS: Yes, it is. 14:49:10

7 BY MR. ULIN: 14:49:10

8 Q. Is that a document you prepared? 14:49:11

9 MS. ESKENAZI: You can answer that as well. 14:49:12

10 THE WITNESS: Yes, it is. 14:49:14

11 BY MR. ULIN: 14:49:14

12 Q. Do you still have a copy? 14:49:22

13 MS. ESKENAZI: You may answer that question 14:49:24

14 as well. It's a "yes" or "no" question. 14:49:25

15 THE WITNESS: Yes, I do. 14:49:27

16 BY MR. ULIN: 14:49:27

17 Q. And is it still to this day used by the 14:49:29

18 Estate and HarperCollins? 14:49:33

19 MS. ESKENAZI: Objection. Well, objection. 14:49:33

20 Calls for -- it could call for attorney-client 14:49:37

21 privileged information. 14:49:40

22 And if there's a question in your mind we 14:49:43

23 should -- you're not to answer anything that would 14:49:45

24 reveal attorney-client communications. 14:49:49

25 THE WITNESS: Right. 14:49:52

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1 So your question again was? 14:49:53

2 BY MR. ULIN: 14:49:53

3 Q. Is -- are the permissions -- is the 14:49:56

4 permissions guidelines document that you drafted 14:49:58

5 still used by the Estate and HarperCollins? 14:50:02

6 A. I believe it is. It is wildly out of date. 14:50:05

7 Q. Okay. When did you draft it? 14:50:09

8 A. I think I drafted it in -- I can't be 14:50:11

9 precise when I drafted it. But it would have been 14:50:18

10 after I became -- after Mr. Williamson retired and I 14:50:27

11 was the responsible partner for the Tolkien Estate, 14:50:33

12 and so I think early '90s. 14:50:36

13 Q. Okay. And have you revised it? 14:50:40

14 A. As I say, no. I haven't -- I haven't 14:50:42

15 revised -- 14:50:46

16 MS. ESKENAZI: That's the -- you've 14:50:47

17 answered the question. 14:50:49

18 THE WITNESS: Okay. 14:50:49

19 BY MR. ULIN: 14:50:49

20 Q. Was the -- were the permissions guidelines 14:50:51

21 collected by your counsel in connection with 14:50:54

22 discovery in this case? 14:50:56

23 MS. ESKENAZI: Objection. That question 14:50:56

24 calls for potentially a attorney-client 14:51:03

25 communication. 14:51:06

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1 If you can answer that question without 14:51:08
2 divulging attorney-client communication, please do. 14:51:11
3 THE WITNESS: In connection with the 14:51:14
4 Estate's discovery obligations in this litigation, I 14:51:17
5 provided Ms. Eskenazi and her firm with details of 14:51:20
6 all of our files and they directed me to what 14:51:24
7 they -- what I had to have scanned and sent to them. 14:51:28
8 BY MR. ULIN: 14:51:32
9 Q. Fair enough. So you provided them with 14:51:32
10 access to files -- 14:51:33
11 A. Everything. 14:51:34
12 Q. -- in which the permissions guidelines were 14:51:35
13 included; is that correct? 14:51:37
14 A. Yes. 14:51:37
15 MR. ULIN: Okay. We can fight this out off 14:51:38
16 line but we -- 14:51:46
17 MR. GLICK: Need more foundation. More 14:51:48
18 foundation. 14:51:50
19 MS. ESKENAZI: Are we done with this 14:51:57
20 document? 14:51:59
21 BY MR. ULIN: 14:51:59
22 Q. Do the permission guidelines address the 14:52:09
23 use of Tolkien trademarks in connection with the 14:52:16
24 licensing of services? 14:52:23
25 A. I don't recall. 14:52:25

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1 Q. Do they address the use of Tolkien 14:52:26
2 trademarks in connection with the licensing of 14:52:30
3 merchandise? 14:52:33

4 MS. ESKENAZI: Well, objection. I 14:52:34
5 interposed an objection late and I apologize for 14:52:36
6 that, but again, to the extent that -- that -- I'm 14:52:39
7 going to let this witness talk about basic areas of 14:52:41
8 subject matter, to the extent you'll agree that that 14:52:44
9 itself won't waive the privilege. I don't think it 14:52:49
10 does. But to the extent that you're going to probe 14:52:52
11 into exactly what the document says and -- and then 14:52:55
12 I think that it would. 14:52:59

13 MR. ULIN: Okay. And I -- I'm going to 14:53:01
14 tell you at least our preliminary position is the 14:53:02
15 privilege has already been waived, including by the 14:53:05
16 fact that they're referenced in e-mail traffic that 14:53:07
17 went to Zaentz and to Zaentz's outside counsel, 14:53:09
18 Howard Rice, 12 years ago. But again, we can fight 14:53:13
19 that out off line. 14:53:16

20 MR. GLICK: Let's be clear. The fact that 14:53:17
21 you allow him -- allow her to answer the subject 14:53:19
22 matter questions, we will not contend that that is a 14:53:23
23 waiver. 14:53:27

24 MS. ESKENAZI: That is fair enough, Marty. 14:53:28

25 MR. ULIN: Okay. 14:53:28

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1 MS. ESKENAZI: And it's a "yes" or "no" 14:53:33
2 question. 14:53:34
3 MR. ULIN: Just was looking to see what the
4 last question was.
5 THE REPORTER: I have it. Do you want me
6 to read it?
7 MR. ULIN: Sure.
8 (The reporter read the record
9 as follows:
10 "QUESTION: Do they address 14:52:26
11 the use of Tolkien trademarks in 14:52:29
12 connection with the licensing of 14:52:31
13 merchandise?") 14:52:33
14 MS. ESKENAZI: You may answer that one 14:53:50
15 question "yes" or "no" with that stipulation that 14:53:52
16 it's not a waiver. 14:53:54
17 THE WITNESS: I don't recall. 14:53:55
18 BY MR. ULIN: 14:53:55
19 Q. Do they address the use of Tolkien 14:53:57
20 trademarks in connection with the licensing of 14:53:59
21 computer games? 14:54:02
22 MS. ESKENAZI: Same agreement? 14:54:03
23 MR. ULIN: Yes, we can keep that as a 14:54:05
24 continuing agreement, that -- 14:54:07
25 MS. ESKENAZI: Thank you. 14:54:07

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1 MR. ULIN: -- we won't argue that the 14:54:07
2 responses to these questions in this deposition 14:54:08
3 constitute a waiver of privilege. 14:54:11
4 MS. ESKENAZI: Thank you. 14:54:12
5 You may answer "yes" or "no." 14:54:13
6 THE WITNESS: I don't recall. It's a long 14:54:17
7 time since I've looked at the document. 14:54:19
8 BY MR. ULIN: 14:54:19
9 Q. Do the permission guidelines address the 14:54:22
10 licensing of gambling games or games of chance? 14:54:27
11 MS. ESKENAZI: It's a "yes" or "no" 14:54:36
12 question. 14:54:37
13 THE WITNESS: I don't believe they do. 14:54:43
14 BY MR. ULIN: 14:54:43
15 Q. Ms. Blackburn, as best you can recall, can 14:55:04
16 you outline for me what the permission guidelines 14:55:08
17 instruct HarperCollins with respect to the use of 14:55:13
18 Tolkien-related marks? 14:55:15
19 MS. ESKENAZI: Well, again, I think that 14:55:19
20 that's -- that encompasses more than just -- just 14:55:19
21 subject matter. 14:55:24
22 MR. GLICK: We're making a record. You'll 14:55:26
23 instruct when you do. 14:55:28
24 MS. ESKENAZI: Okay. Well, I just wanted 14:55:29
25 to make sure -- 14:55:29

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1 MR. ULIN: Yes. 14:55:30

2 MS. ESKENAZI: -- that we're now moving on 14:55:31

3 to the -- essentially the next topic. 14:55:32

4 MR. ULIN: We are. 14:55:34

5 MS. ESKENAZI: Okay. In which case I am 14:55:35

6 going to instruct not to answer because I think that 14:55:37

7 crosses the line. 14:55:40

8 MR. ULIN: And Bonnie, just to be clear, 14:55:41

9 you would instruct not to answer any question I ask 14:55:43

10 that goes to the substance of what the permission 14:55:45

11 guidelines instruct with respect to the use of the 14:55:49

12 Tolkien trademarks; is that correct? 14:55:51

13 MS. ESKENAZI: What the permission 14:55:53

14 guidelines communicates as between the Estate and 14:55:55

15 HarperCollins, yes, that's correct. 14:55:59

16 MR. ULIN: Okay. 14:56:02

17 Q. And Ms. Blackburn, you would accept your 14:56:03

18 counsel's instruction not to respond about the 14:56:05

19 substance of what the permission guidelines 14:56:07

20 communicate between the Estate and HarperCollins 14:56:10

21 with respect to the use of Tolkien-related 14:56:12

22 trademarks? 14:56:15

23 A. I will accept my counsel's advice on that 14:56:17

24 question. 14:56:18

25 MR. ULIN: Okay. All right. For the 14:56:33

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1 record, we will request and again, deal with this 14:56:34
2 off -- outside of this context, that you produce the 14:56:36
3 permission guidelines in response to our discovery, 14:56:39
4 which we think they're called for and we'll argue 14:56:41
5 that they're not privileged and should have been 14:56:43
6 produced. 14:56:45

7 MS. ESKENAZI: I understand your position. 14:56:45
8 We disagree. 14:56:46

9 MR. ULIN: Fair enough. 14:56:47

10 We'll mark Exhibit 20 and place it before 14:56:52
11 the witness. These documents are stapled separately 14:56:59
12 but they constitute one exhibit. 14:57:02

13 (The document referred to was 14:57:02
14 marked for identification as 14:57:02
15 Exhibit 20 and attached to this 14:57:02
16 deposition.) 14:57:02

17 MR. ULIN: Bonnie, this is yours. 14:57:22

18 MS. ESKENAZI: Thank you. Is this two 14:57:22
19 documents? 14:57:23

20 MR. ULIN: It is one document that was 14:57:24
21 stapled separately. It's a document and its 14:57:25
22 enclosure, and they were stapled separately. You'll 14:57:29
23 note from the Bates numbers that they're 14:57:33
24 consecutive. 14:57:35

25 THE WITNESS: This letter establishes that 14:57:47

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1	it's Humphreys with an "E."	14:57:49
2	MR. ULIN: I knew I had read that name.	14:57:55
3	Thank you.	14:57:57
4	THE WITNESS: You were right.	14:57:57
5	BY MR. ULIN:	14:57:57
6	Q. Again, Ms. Blackburn, while you're free to	14:58:04
7	read the document, I will only be asking you	14:58:06
8	questions about the first paragraph on the final	14:58:07
9	page of the letter and also about certain entries in	14:58:10
10	the enclosed chart.	14:58:14
11	A. Okay.	14:58:16
12	MS. ESKENAZI: In which case you should	14:58:19
13	probably read it.	14:58:20
14	THE WITNESS: I've read these documents.	15:01:11
15	BY MR. ULIN:	15:01:12
16	Q. Okay. And Ms. Blackburn, do you recognize	15:01:12
17	Exhibit 20 as a letter you sent to Al Bendich on or	15:01:15
18	about May the 3rd, 2002?	15:01:18
19	A. Yes, I do.	15:01:20
20	Q. And do you remember sending this letter to	15:01:21
21	Mr. Bendich?	15:01:22
22	A. I suppose the answer to that is I remember	15:01:24
23	now.	15:01:38
24	Q. And seeing the letter refreshes your	15:01:40
25	recollection --	15:01:41

1 A. Yes. 15:01:41

2 Q. -- that you -- 15:01:42

3 A. Yes, that's what I mean. 15:01:43

4 Q. Okay. In -- on the second page -- I'm 15:01:45

5 sorry, it's the third page of the letter, in the 15:01:46

6 first full paragraph on that page you indicate that 15:01:50

7 you're enclosing a couple of schedules dealing with 15:01:53

8 the status of the Estate's various applications for 15:01:55

9 registration of the Tolkien name and monogram as 15:01:58

10 trademarks. 15:02:06

11 Do you see that? 15:02:07

12 A. I do. 15:02:07

13 Q. And is the chart that is attached to 15:02:07

14 Exhibit 20 the schedules that you were referring to 15:02:09

15 in the letter? 15:02:14

16 A. Yes, I believe it is. 15:02:15

17 Q. And to be clear, this chart reflects the 15:02:22

18 Tolkien Estate's own registration of its trademarks 15:02:25

19 in the Tolkien name and the J.R.R.T. monogram; is 15:02:30

20 that correct? 15:02:30

21 A. That's right. There's -- there's two 15:02:34

22 elements to it. The first bit is the Tolkien word 15:02:35

23 mark and the second, the graphic device, J.R.R. 15:02:40

24 Tolkien's own signature or monogram. Not -- sorry, 15:02:42

25 not signature, his monogram, his initials. 15:02:46

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1 Q. And these are registrations that would have 15:02:49
2 been accomplished by the Estate through the Manches 15:02:51
3 law firm, correct? 15:02:54
4 A. In 2002? Yes. 15:02:55
5 Q. Okay. And you were the attorney at Manches 15:02:57
6 who would have been responsible to oversee these 15:03:01
7 registrations; is that correct? 15:03:05
8 A. Yes. 15:03:06
9 Q. Looking at the first page of the -- the 15:03:07
10 chart on the Tolkien mark -- 15:03:14
11 A. Yes. 15:03:15
12 Q. -- you indicate that it was registered in 15:03:16
13 Class 9? 15:03:19
14 A. Yes. 15:03:20
15 Q. And then you list the various -- the 15:03:22
16 specifications for which it was registered -- 15:03:24
17 A. Yes. 15:03:26
18 Q. -- which include computer software. 15:03:27
19 Do you see that at the second line -- 15:03:28
20 A. Yes. 15:03:32
21 Q. -- of that entry? 15:03:32
22 A. Yes. 15:03:32
23 Q. Which also includes computer software, 15:03:33
24 looking further down the entry, provided by 15:03:35
25 telecommunications networks, by online delivery and 15:03:38

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1 from the Internet. 15:03:41

2 Do you see that? 15:03:42

3 A. Yes. 15:03:42

4 Q. And you registered the Tolkien mark for 15:03:43

5 computer software that was available by online 15:03:46

6 delivery and from the Internet in April of 2000; is 15:03:48

7 that correct? 15:03:48

8 A. This document is May 2002. I don't know 15:03:58

9 when -- oh, sorry, I see what you mean. You're 15:04:03

10 referring to the -- that would be the -- the date 15:04:07

11 of -- of the application. 15:04:10

12 Q. Okay. So you filed the application for 15:04:12

13 registration in that class for computer software 15:04:13

14 provided -- including software provided by online 15:04:20

15 delivery in April of 2000, correct? 15:04:23

16 A. Yes. 15:04:23

17 Q. Okay. And then looking at your -- turning 15:04:25

18 to -- excuse me -- page 3 of the -- actually, let 15:04:31

19 me -- sorry. 15:04:36

20 Turning to page 2 of the chart, you 15:04:38

21 register the Tolkien name in the European Union 15:04:44

22 under Class 41. 15:04:49

23 Do you see that? 15:04:51

24 A. Uh-huh. 15:04:51

25 Q. And then you provide specifications for the 15:04:52

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1 purposes for which that mark is registered under 15:04:57
2 Class 41 which include, looking three lines up from 15:04:59
3 the bottom of the page, electronic games including 15:05:02
4 interactive games provided online or from the 15:05:04
5 Internet, including Web sites. 15:05:07

6 Do you see that? 15:05:09

7 A. Yes. 15:05:09

8 Q. All right. And then on page 3, looking at 15:05:12
9 your Class 9 registration for New Zealand, the 15:05:16
10 second -- the first full entry on page 3 of the 15:05:20
11 chart, virtually the same language contained, you 15:05:22
12 registered in Class 9 for New Zealand, computer 15:05:26
13 games and electronic games, including interactive 15:05:30
14 games provided online or from the Internet, 15:05:33
15 including Web sites. 15:05:35

16 Do you see that? 15:05:36

17 A. Yes. 15:05:37

18 Q. Okay. And those -- that EU registration 15:05:38
19 was in April of 2000 as well or the application for 15:05:41
20 registration, rather, was filed in April of 2000 as 15:05:43
21 well, correct? I'm looking at the EU registration 15:05:45
22 for Class 9 on page 2 of the document. 15:05:51

23 A. Can I just -- can I just clarify the 15:05:54
24 U.K. -- that would be a U.K. date so that would be 4 15:05:57
25 February. 15:06:00

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1 Q. I'm sorry. Okay. 15:06:00

2 A. Okay. So the question? 15:06:01

3 Q. Sure. Let's ask the question again. 15:06:04

4 Looking at page 2, the EU application for 15:06:08

5 the Tolkien mark in Class 41 would have been made as 15:06:10

6 of February 2000, correct? 15:06:19

7 A. Yes. It looks like that was the case. 15:06:22

8 Q. The same is true of the New Zealand 15:06:24

9 application for the Tolkien mark in Class 9, 15:06:29

10 correct? 15:06:29

11 A. That appears to be the case. 15:06:31

12 Q. Okay. Does -- do these registrations 15:06:35

13 refresh -- refresh your recollection that you were, 15:06:38

14 in fact, aware as of February of 2000 that computer 15:06:40

15 software and electronic games, including interactive 15:06:45

16 games, were available for distribution online, 15:06:50

17 including over the Internet? 15:06:56

18 A. No. 15:06:57

19 Q. No? Why not? 15:06:58

20 A. Well, I didn't devise these specifications 15:07:00

21 of goods. 15:07:03

22 Q. But you did review them, didn't you? 15:07:04

23 A. I may have. But my concern was simply to 15:07:07

24 register as widely as possible. And the trademark 15:07:10

25 attorneys, for example, in New Zealand would 15:07:13

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1 probably have provided specimen wording for the 15:07:16
2 goods specifications. 15:07:20

3 Q. So you were at least aware, based on your 15:07:21
4 review of your trademark applications, that the 15:07:23
5 Estate itself had registered for marks relating to 15:07:27
6 computer and electronic games provided online in 15:07:31
7 2000, correct? 15:07:34

8 A. I don't think that's a correct summary of 15:07:37
9 the position, but I'd need to hear your statement 15:07:39
10 again. 15:07:42

11 Q. All I'm asking is whether you were aware 15:07:43
12 that the Estate had registered for -- sorry, had 15:07:46
13 applied for trademark registrations relating to 15:07:51
14 computer and electronic games provided online as 15:07:53
15 early as February 2000? 15:07:56

16 A. Well, I was -- 15:08:00

17 MS. ESKENAZI: Objection. Vague and 15:08:00
18 ambiguous. 15:08:01

19 THE WITNESS: I was aware in February -- 15:08:01
20 in -- in February of 2000 that we had made 15:08:06
21 applications to register goods in these classes. I 15:08:10
22 don't -- I don't know that I would have applied my 15:08:16
23 mind to the absolute detail of all of the components 15:08:18
24 of the goods specification. 15:08:22

25 BY MR. ULIN: 15:08:22

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1 Q. And it was your understanding at that time 15:08:25
2 that it was lawful and possible to register 15:08:28
3 trademarks that the Estate owned for electronic 15:08:34
4 games and computer software provided online, 15:08:39
5 correct? 15:08:39

6 MS. ESKENAZI: Objection. Vague and 15:08:42
7 ambiguous. 15:08:43

8 THE WITNESS: What I knew at the time was 15:08:43
9 that music could be downloaded from the Internet. I 15:08:46
10 don't know what -- I don't -- I didn't have any 15:08:51
11 specific knowledge of other technologies, but it is 15:08:52
12 common practice when devising these goods 15:08:56
13 specifications to anticipate technological 15:08:59
14 developments. So my assessment of these marks is 15:09:03
15 that the trademark attorneys we were using who -- 15:09:05
16 who assisted with the specification of goods would 15:09:09
17 have wanted to anticipate those technological 15:09:12
18 developments. 15:09:16

19 BY MR. ULIN: 15:09:16

20 Q. Okay. And you understand -- and you 15:09:16
21 understood you had the right to register for marks 15:09:17
22 in those -- sorry. Let me start the question again. 15:09:20

23 You understood you had the right to apply 15:09:23
24 for registrations in those classes for the marks 15:09:25
25 that the Estate owned, correct? 15:09:27

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1 MS. ESKENAZI: Objection. Calls for a 15:09:30
2 legal conclusion. Calls for speculation. 15:09:31
3 Potentially invades the attorney-client privilege. 15:09:33
4 To the extent that you may have learned 15:09:36
5 information from counsel, local counsel, as you 15:09:39
6 refer to maybe New Zealand counsel or whatever, that 15:09:43
7 invades attorney-client privilege and I would 15:09:48
8 instruct you not to answer. 15:09:50
9 To the extent you can answer that question 15:09:51
10 without divulging attorney-client privileged 15:09:53
11 information, you can answer. 15:09:55
12 THE WITNESS: I'm sorry, I need the 15:09:57
13 question again. 15:09:57
14 MR. ULIN: Would you read it back, please. 15:10:08
15 (The reporter read the record 15:10:08
16 as follows: 15:10:08
17 "QUESTION: And you 15:09:17
18 understood you had the right to 15:09:17
19 register for marks in those -- 15:09:18
20 sorry. 15:09:21
21 "You understood you had the 15:09:23
22 right to apply for registrations 15:09:25
23 in those classes for the marks 15:09:26
24 that the Estate owned, correct?") 15:09:27
25 THE WITNESS: I understood that the Tolkien 15:10:09

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1 Estate could register the Tolkien marks as it -- as 15:10:13
2 it chose according to any local advice received. 15:10:18
3 BY MR. ULIN: 15:10:18
4 Q. Okay. Including for computer software and 15:10:23
5 electronic or interactive games provided online or 15:10:26
6 over the Internet, correct? 15:10:30
7 A. The Tolkien Estate could register the mark 15:10:32
8 Tolkien for any specifications of goods it saw fit. 15:10:34
9 Q. Okay. Did you ever apply to register The 15:10:46
10 Lord of the Rings or The Hobbit titles or characters 15:10:53
11 from those works for electronic games or computer 15:10:55
12 software provided online or over the Internet? 15:10:59
13 A. I've made no applications to register The 15:11:04
14 Lord of the Rings or The Hobbit as -- as trademarks. 15:11:07
15 Q. Why not? 15:11:08
16 MS. ESKENAZI: Well, objection. Again, to 15:11:10
17 the extent that that calls for a legal conclusion or 15:11:12
18 calls for any attorney-client privileged 15:11:15
19 information, I'm going to instruct not to answer. 15:11:17
20 To the extent you can answer that question 15:11:20
21 without divulging attorney-client privileged 15:11:22
22 information. 15:11:24
23 THE WITNESS: I can't -- I can't answer 15:11:24
24 that question without divulging attorney -- without 15:11:25
25 divulging privileged information. 15:11:29

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1 BY MR. ULIN: 15:11:31

2 Q. Let me ask two more questions, then I'm 15:11:31

3 going to stop. 15:11:33

4 It's your position that the Estate retains 15:11:34

5 the rights to use The Lord of the Rings and Hobbit 15:11:37

6 trademarks in video games that are available by 15:11:41

7 download only, correct? 15:11:45

8 A. Correct. 15:11:47

9 Q. Why have you not attempted to register 15:11:47

10 those trademarks for those uses? 15:11:53

11 A. Because the -- 15:11:56

12 MS. ESKENAZI: Same objection. 15:11:57

13 If you can answer that without -- 15:11:58

14 THE WITNESS: The Tolkien Estate has not -- 15:12:00

15 the Tolkien Estate has not -- trying to get the 15:12:06

16 phrasing of this right. 15:12:12

17 The Tolkien Estate does not seek to use 15:12:13

18 those names on downloadable-only. It has not 15:12:16

19 licensed those rights to -- to -- to use the marks 15:12:20

20 for downloadable-only games. One would only 15:12:25

21 register a trademark if one were minded to use it or 15:12:27

22 it might be foreseen that one might use it in that 15:12:31

23 way. 15:12:34

24 BY MR. ULIN: 15:12:34

25 Q. Has the Tolkien Estate used the name 15:12:34

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1 Tolkien or the J.R.R.T. monogram in connection with 15:12:37
2 downloadable-only video games or computer software 15:12:39
3 at any time since 2000? 15:12:45
4 A. Could you repeat? 15:12:47
5 MR. ULIN: Could you read the question 15:12:47
6 back, please. 15:12:47
7 (The reporter read the record 15:12:47
8 as follows: 15:12:47
9 "QUESTION: Has the Tolkien 15:12:34
10 Estate used the name Tolkien or 15:12:36
11 the J.R.R.T. monogram in 15:12:37
12 connection with downloadable-only 15:12:39
13 video games or computer software 15:12:41
14 at any time since 2000?") 15:12:45
15 THE WITNESS: To the extent that electronic 15:13:01
16 books constitute computer software, it has licensed 15:13:02
17 those marks. 15:13:05
18 BY MR. ULIN: 15:13:05
19 Q. And what about in -- in electronic games? 15:13:05
20 MS. ESKENAZI: Well, objection. Asked and 15:13:12
21 answered. 15:13:14
22 THE WITNESS: I don't -- I don't believe it 15:13:14
23 has. 15:13:18
24 MR. ULIN: At this point I'm going to 15:13:20
25 suspend my questioning pursuant to an arrangement 15:13:21

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1 with counsel for Warner Bros. and allow 15:13:23
2 Mr. Petrocelli to take the remainder of the three 15:13:27
3 hours today. 15:13:29
4 I do have further questions for the witness 15:13:29
5 and we reserve our right to pursue more time with 15:13:31
6 this witness. Among other topics, for example, I 15:13:34
7 have not been able, given the time constraints, to 15:13:37
8 address the disputes regarding registrations in 15:13:40
9 Class 16, registration for a number of disputed 15:13:43
10 areas of goods and services. This was a matter of 15:13:47
11 discussion between our firms over whether this 15:13:52
12 deposition should continue for two days or more. We 15:13:54
13 certainly feel given the centrality of this witness 15:13:57
14 to the matters at issue in this case, this 15:14:00
15 deposition should have been set for more than one 15:14:02
16 day. And we'll take that position with the Court, 15:14:04
17 assuming that we can't work it out with counsel for 15:14:06
18 the Estate. 15:14:09
19 MS. ESKENAZI: We understand. Just 15:14:09
20 understand that we disagree. 15:14:11
21 MR. ULIN: Understood. 15:14:12
22 MR. GLICK: Go off the record. 15:14:15
23 THE VIDEOGRAPHER: Off the record at 3:15 15:14:15
24 p.m. 15:14:18
25 (Brief recess.) 15:14:54

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1 THE VIDEOGRAPHER: We're back on the record 15:16:43

2 at 3:17 p.m. Counsel may proceed. 15:16:53

3 15:16:53

4 EXAMINATION 15:16:53

5 BY MR. PETROCELLI: 15:16:53

6 Q. Good afternoon, Ms. Blackburn. I'm Dan 15:16:57

7 Petrocelli and counsel for Warner Bros. 15:17:00

8 A. Good afternoon. 15:17:02

9 (Pages 194 through 201 are
10 marked confidential and are bound
11 under separate cover. The
12 nonconfidential portion of this
13 transcript continues on page 202.)
14
15
16
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1 Q. Who authorized the filing of the lawsuit on 15:26:57
2 behalf of Fourth Age Limited? 15:27:00
3 MS. ESKENAZI: Objection to the extent it 15:27:02
4 calls for divulging attorney-client privileged 15:27:04
5 information. 15:27:08
6 You can answer if you can disclose that 15:27:09
7 without divulging attorney-client privileged 15:27:12
8 information. 15:27:14
9 THE WITNESS: I don't -- I don't know 15:27:17
10 whether it does or -- I don't know -- I don't really 15:27:18
11 understand what would and would not amount to 15:27:22
12 disclosure of privileged information. 15:27:25
13 MS. ESKENAZI: Okay. Well, then, why don't 15:27:27
14 we take a break and we can discuss what does divulge 15:27:29
15 and what doesn't divulge attorney-client privileged 15:27:35
16 information. 15:27:37
17 MR. PETROCELLI: Well, I can't stop you 15:27:38
18 from taking a break. The question does not 15:27:40
19 conceivably violate the privilege, but go ahead and 15:27:42
20 take your break. 15:27:44
21 MS. ESKENAZI: Of course, it does. 15:27:46
22 THE VIDEOGRAPHER: Off the record at 3:28 15:27:48
23 p.m. 15:27:50
24 (Brief recess.) 15:28:45
25 THE VIDEOGRAPHER: We are back on the 15:30:25

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1 record at 3:31 p.m. 15:30:36

2 MS. ESKENAZI: I'm going to instruct the 15:30:41

3 witness not to answer that question. After 15:30:42

4 consultation, it appears as though any information 15:30:45

5 she would have would be through 15:30:48

6 attorney-client comm- -- attorney-client privileged 15:30:51

7 communications. 15:30:52

8 BY MR. PETROCELLI: 15:30:52

9 Q. With respect to that instruction, 15:30:55

10 Ms. Blackburn, who -- who was the lawyer involved in 15:30:56

11 the communication? 15:31:00

12 A. What communication? 15:31:00

13 Q. The communication that's the subject of the 15:31:02

14 instruction not to answer my question. 15:31:05

15 A. Are you asking me who advised me? I don't 15:31:10

16 understand your question. 15:31:14

17 MS. ESKENAZI: Yeah, it's vague and 15:31:17

18 ambiguous. 15:31:17

19 BY MR. PETROCELLI: 15:31:17

20 Q. The -- the -- the attorney-client 15:31:18

21 instruction, you were instructed not to answer on 15:31:20

22 the ground of the attorney-client privilege. 15:31:22

23 A. Right. 15:31:25

24 Q. Who is the attorney and who is the client? 15:31:26

25 A. The attorney is the firm of Maier 15:31:28

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1 Blackburn. 15:31:30

2 Q. And which people were involved in the 15:31:31

3 giving or receiving of -- of the privileged 15:31:35

4 information? 15:31:37

5 MS. ESKENAZI: You can identify the 15:31:39

6 clients. 15:31:41

7 THE WITNESS: The -- the clients are the 15:31:42

8 two clients I've mentioned to you. 15:31:43

9 BY MR. PETROCELLI: 15:31:43

10 Q. Which people in the law firm who are the 15:31:46

11 attorneys in the attorney part of the 15:31:49

12 attorney-client privilege were involved in this? 15:31:51

13 A. The partners in the firm, myself and Steven 15:31:55

14 Maier. 15:31:57

15 Q. Are you the only partners in the firm, the 15:31:57

16 two of you? 15:32:01

17 A. Yes, we are. 15:32:01

18 Q. Okay. And who were the clients involved in 15:32:02

19 the communication that's the subject of that 15:32:04

20 instruction? 15:32:07

21 A. The Tolkien Estate Limited and the Tolkien 15:32:07

22 Trust. 15:32:11

23 Q. Okay. And what people on behalf of those 15:32:12

24 entities were involved in that communication? 15:32:15

25 A. In the case of the Tolkien Estate Limited, 15:32:19

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1 the directors, and in the case of the Tolkien Trust, 15:32:22
2 the directors/trustees. 15:32:26
3 THE REPORTER: "The directors," what? I'm 15:32:26
4 sorry. 15:32:26
5 THE WITNESS: "Stroke," trustees. 15:32:26
6 THE REPORTER: Thank you. 15:32:26
7 THE WITNESS: "Slash." 15:32:34
8 BY MR. PETROCELLI: 15:32:35
9 Q. So the directors in the case of the Tolkien 15:32:35
10 Estate Limited, you identified as Christopher, 15:32:39
11 Baillie, Michael, Priscilla, Simon and Steven Maier? 15:32:42
12 A. Correct. 15:32:49
13 Q. Okay. And Priscilla, Christopher, Baillie, 15:32:51
14 Michael for the trust? 15:32:53
15 A. Correct. 15:32:55
16 Q. Okay. Now, are there any documents, such 15:32:56
17 as minutes or memos, that reflect the decision to 15:33:03
18 authorize the filing of this lawsuit? 15:33:11
19 MS. ESKENAZI: Objection. Attorney-client 15:33:15
20 privilege. 15:33:16
21 You can answer that question "yes" or "no" 15:33:18
22 to the extent that I have a stipulation that it will 15:33:22
23 not waive the -- her answer to the question will not 15:33:26
24 waive the attorney-client privilege. 15:33:28
25 MR. PETROCELLI: You don't need one, but 15:33:30

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1 I'll give it to you. 15:33:32

2 THE WITNESS: Could you repeat the 15:33:36

3 question, please? 15:33:37

4 MR. PETROCELLI: 15:33:37

5 Q. Yeah. Are there any documents such as 15:33:41

6 minutes or memos that reflect the decision to 15:33:42

7 authorize filing of this lawsuit? 15:33:45

8 A. There will be documents. 15:33:47

9 Q. Where are those documents? 15:33:49

10 A. They will be in the files of Maier 15:33:51

11 Blackburn, LLP. 15:33:55

12 Q. Okay. Are there minutes of -- of meetings 15:33:59

13 that are kept by the directors of the two entities? 15:34:03

14 A. Yes, there are minute books. 15:34:08

15 Q. Okay. Your firm maintains those minute 15:34:09

16 books? 15:34:12

17 A. Yes. 15:34:12

18 Q. Okay. Are there minutes related to the 15:34:17

19 decision or authorization to file this lawsuit? 15:34:20

20 A. No, there aren't. 15:34:22

21 Q. Okay. Are there other documents, such as 15:34:24

22 memos? 15:34:25

23 MS. ESKENAZI: Again, to the extent that we 15:34:28

24 have the same -- 15:34:30

25 MR. PETROCELLI: You do. 15:34:31

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1 MS. ESKENAZI: -- agreement. 15:34:32

2 You may answer that "yes" or "no." 15:34:33

3 THE WITNESS: There are documents. Sorry, 15:34:35

4 I can't remember the question. 15:34:40

5 BY MR. PETROCELLI: 15:34:40

6 Q. Documents that reflect the decision or 15:34:42

7 authorization to file the lawsuit? 15:34:44

8 A. Yes, there are. 15:34:45

9 Q. And those documents are privileged? 15:34:46

10 MS. ESKENAZI: We are asserting the 15:34:50

11 privilege. 15:34:52

12 MR. PETROCELLI: I'm asking -- 15:34:53

13 THE WITNESS: I am assert- -- yes. 15:34:54

14 MR. PETROCELLI: I didn't ask you if you're 15:34:55

15 asserting it. I'm asking, are they privileged? 15:34:56

16 THE WITNESS: Well -- 15:34:59

17 MS. ESKENAZI: Under advice of U.S. counsel 15:34:59

18 in this lawsuit, we believe they are privileged. 15:35:00

19 They are privileged. 15:35:05

20 THE WITNESS: Privilege in this -- in this 15:35:08

21 instance is, as I understand, a U.S. law concept. 15:35:09

22 So I have to -- I have to understand that principle 15:35:13

23 from my counsel. 15:35:16

24 BY MR. PETROCELLI: 15:35:16

25 Q. Have you turned those documents over to the 15:35:18

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1 Greenberg firm? 15:35:21

2 A. I've turned over everything to the 15:35:21

3 Greenberg firm. 15:35:24

4 Q. Does everything include those documents? 15:35:25

5 A. Yes, I think it would. 15:35:27

6 Q. Okay. When did you turn everything over to 15:35:29

7 the Greenberg firm? 15:35:31

8 A. Well, in stages. 15:35:32

9 Q. Beginning when and ending when? 15:35:36

10 A. I don't recall the exact dates. 15:35:45

11 Q. General time frames will do. 15:35:48

12 A. Well, I'm not -- I'm not sure, but 15:35:51

13 certainly we started to turn over documents once the 15:36:07

14 lawsuit was filed. We might have done it before -- 15:36:11

15 I -- I really don't recall. 15:36:14

16 Q. How did you provide Greenberg with the 15:36:16

17 documents? Did you mail them? Did you hand-deliver 15:36:20

18 them? Did you e-mail them? 15:36:24

19 THE WITNESS: Can I answer this question? 15:36:26

20 MS. ESKENAZI: You may answer this 15:36:27

21 question. 15:36:29

22 THE WITNESS: I provided the list of files 15:36:32

23 to Greenberg Glusker. 15:36:35

24 MS. ESKENAZI: That's not the question. 15:36:39

25 THE WITNESS: Sorry. 15:36:40

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1 MS. ESKENAZI: That's why I allowed you to 15:36:41
2 answer the question. Not what you communicated to 15:36:43
3 us. How did you provide the files. 15:36:46
4 THE WITNESS: Oh, I'm so sorry. Well, they 15:36:48
5 were scanned in a -- in a -- through a provider in 15:36:51
6 London and transmitted directly from the provider to 15:36:55
7 Greenberg Glusker. 15:37:01
8 BY MR. PETROCELLI: 15:37:01
9 Q. And when did that happen? Around the time 15:37:06
10 the case was filed? 15:37:08
11 A. It -- it has happened in stages because 15:37:09
12 there is a lot of documentation. 15:37:14
13 Q. When is the last time it happened? 15:37:16
14 A. Some months ago. I can't be specific. But 15:37:17
15 the process hasn't involved me. 15:37:26
16 Q. Excuse me? 15:37:29
17 A. The process has involved the provider and 15:37:29
18 Greenberg Glusker. 15:37:32
19 Q. But the provider is an outside service 15:37:33
20 in -- 15:37:36
21 A. That's right, but they've collected the 15:37:36
22 files, scanned them and sent them to Greenberg 15:37:38
23 Glusker. 15:37:42
24 Q. Which city does your firm work out of or is 15:37:42
25 headquartered in? 15:37:45

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1 A. Maier Blackburn operates in Oxford. 15:37:46
2 Q. Oxford? 15:37:48
3 A. Yes. 15:37:50
4 Q. Okay. What was the name of the service you 15:37:50
5 used? 15:37:52
6 A. The company processing the documents is 15:37:54
7 a -- a company called Millnet. 15:37:57
8 Q. In Oxford? 15:38:01
9 A. No, in London. 15:38:02
10 Q. In London? Where did you get the documents 15:38:03
11 that you gave to the service to provide to 15:38:06
12 Greenberg? 15:38:08
13 A. I didn't give the documents to the service. 15:38:09
14 They collected them from a storage facility, save in 15:38:11
15 relation to current files in the office. 15:38:17
16 Q. So the two locations were your firm's 15:38:19
17 offices and the storage facility? 15:38:22
18 A. Correct. 15:38:23
19 Q. Okay. And you have an inventory or list of 15:38:24
20 all these files? 15:38:27
21 A. I have a list of files in storage. 15:38:28
22 Q. And do you have a list of current files? 15:38:33
23 A. Not really a list. 15:38:34
24 Q. You have something like a list? 15:38:38
25 A. No, because the -- the current files are 15:38:42

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1 just the ones in the drawer. They go onto a list 15:38:44
2 when they're put away. 15:38:47
3 Q. You mean in storage? 15:38:49
4 A. Yes. 15:38:50
5 Q. Is it your firm's storage facility? 15:38:51
6 A. No. 15:38:53
7 Q. It's a general storage facility and you 15:38:55
8 have space there? 15:38:57
9 A. It's a third-party provider of storage 15:38:57
10 space. 15:39:00
11 Q. For physical documents? 15:39:00
12 A. In our case for physical documents. 15:39:02
13 Q. Okay. And the documents that are in 15:39:06
14 storage, what's -- what's the name of the storage 15:39:09
15 facility? 15:39:12
16 A. It's called Restore. 15:39:12
17 Q. And where is it located? 15:39:15
18 A. It's located in an air- -- a former 15:39:17
19 aircraft hanger in -- somewhere in Oxfordshire. 15:39:20
20 Q. Okay. Did you bring with you all of the 15:39:27
21 Tolkien-related files and documents from your prior 15:39:31
22 law firm when you started your current firm? 15:39:34
23 A. Yes, I did. 15:39:36
24 Q. Did you leave anything behind? 15:39:37
25 A. No. 15:39:39

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1 Q. Did you take files out of their storage? 15:39:40

2 A. They used the same storage facility, so it 15:39:42

3 wasn't necessary to move them. 15:39:47

4 Q. So the files literally did not have to 15:39:48

5 move? 15:39:50

6 A. Correct. 15:39:50

7 Q. They're still there from before? 15:39:50

8 A. Correct. 15:39:52

9 Q. The name of your prior firm was Manches; is 15:39:55

10 that right? 15:39:55

11 A. That's correct. 15:40:01

12 Q. And when Morrell Peel & Gamlen merged into 15:40:02

13 Manches, did all of the Tolkien files at Morrell go 15:40:10

14 to Manches or stay with Manches? 15:40:13

15 A. Yes, they did. 15:40:18

16 Q. Are you aware of documents related to -- to 15:40:23

17 this case, to the issues in this case that have been 15:40:25

18 tossed out or discarded over the years? 15:40:29

19 A. No. I was always careful to make sure that 15:40:32

20 the Tolkien files were kept intact. 15:40:41

21 Q. From when? From the time that you got 15:40:44

22 actively involved? 15:40:46

23 A. From all -- all the time that I have been 15:40:47

24 involved. 15:40:49

25 Q. And I understand that that's from around 15:40:49

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1 1992? 15:40:52

2 A. Yeah. Yes. 15:40:52

3 Q. What about electronic files? Does your -- 15:40:57

4 does the Man- -- did the Manches firm have e-mail? 15:41:01

5 A. Yes. 15:41:04

6 Q. Okay. Did Morrell Peel & Gamlen have 15:41:06

7 e-mail? 15:41:09

8 A. No. 15:41:09

9 Q. When did that merge occur, in '97? 15:41:11

10 A. 1997. 15:41:13

11 Q. Okay. And so there was no e-mail used at 15:41:14

12 all by the firm in '97, right? 15:41:17

13 A. I don't believe so. 15:41:19

14 Q. Okay. And when did Manches begin using 15:41:19

15 e-mail? 15:41:22

16 A. Late '90s. 15:41:23

17 Q. And your current firm Maier Blackburn 15:41:29

18 probably -- is it "Maier" or "Maier"? 15:41:33

19 A. Maier. Maier. 15:41:36

20 Q. Maier Blackburn, does it have e-mail? 15:41:37

21 A. Yes, it does. 15:41:39

22 Q. Okay. Have you -- have you gone back to 15:41:43

23 the Manches firm or have you asked someone on your 15:41:49

24 behalf to obtain their electronic data related to 15:41:52

25 the Tolkien Estate? 15:41:59

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1 A. I believe Greenberg Glusker have been in 15:42:00
2 contact with the firm about that. 15:42:03
3 MS. ESKENAZI: Again, to the extent that 15:42:04
4 you learned that information through attorney-client 15:42:06
5 privileged information, that is not the subject of 15:42:09
6 what you should be disclosing to Mr. Petrocelli in 15:42:10
7 this deposition. 15:42:14
8 BY MR. PETROCELLI: 15:42:14
9 Q. When -- have you personally done anything 15:42:15
10 to acquire electronic data, such as e-mails or files 15:42:18
11 stored electronically at the Manches firm? 15:42:24
12 MS. ESKENAZI: You can answer that question 15:42:28
13 if you've personally done anything. 15:42:29
14 THE WITNESS: I have not done anything. 15:42:31
15 BY MR. PETROCELLI: 15:42:31
16 Q. Okay. Do you know if your partner Steven 15:42:33
17 has? 15:42:35
18 A. I think that question should be directed at 15:42:35
19 him. 15:42:38
20 Q. I'm asking you, though. 15:42:39
21 A. I'm not aware that he has had any contact 15:42:41
22 with them. 15:42:43
23 Q. Do you have any other employees besides -- 15:42:45
24 A. No. 15:42:47
25 Q. Just the two of you, right? 15:42:47

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1 A. Yes. 15:42:47

2 Q. Okay. Is the -- 15:42:48

3 A. Sorry, no. Sorry. Employees, we do have 15:42:50

4 two other employees. 15:42:54

5 Q. Do you know whether any of they have had 15:42:55

6 anything to do with gathering documents from the 15:42:58

7 Manches firm? 15:43:01

8 A. No, they haven't. 15:43:01

9 Q. Have they had any role in collecting 15:43:03

10 documents to provide to Greenberg in this 15:43:05

11 litigation? 15:43:08

12 A. When files currently in the office have 15:43:08

13 been sent for scanning, they have. 15:43:11

14 Q. What are their names? 15:43:13

15 A. They are Nic- -- Nicola Peedell and Julie 15:43:14

16 Knight. 15:43:20

17 Q. Okay. 15:43:20

18 A. We have -- 15:43:20

19 Q. When you -- I'm sorry. 15:43:26

20 A. There might also be another employee, 15:43:26

21 Leslie Dancy. 15:43:29

22 Q. And when you left the Manches firm, did you 15:43:31

23 take with you any electronic files? 15:43:34

24 A. No. 15:43:36

25 Q. Did you do anything to cause Tolkien 15:43:37

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1 material that resided on electronic files to be 15:43:43
2 converted to paper copies? 15:43:46
3 A. The practice at -- at Manches was to print 15:43:49
4 out every electronic document and put the paper copy 15:43:53
5 on the file. We didn't file -- we -- the system of 15:43:57
6 filing was paper-based. 15:44:01
7 Q. What month did you form Maier Blackburn? 15:44:03
8 A. January 2012. 15:44:08
9 Q. Do you still follow that same practice at 15:44:19
10 Maier Blackburn that you had at Manches with respect 15:44:21
11 to documents that exist electronically? 15:44:24
12 A. We now have a hybrid system. We print some 15:44:27
13 things out and we have the power to file 15:44:30
14 electronically, too. 15:44:32
15 Q. Have you -- has the firm saved all of its 15:44:34
16 electronic data related to the Tolkien matter or the 15:44:39
17 Tolkien Estate since the time you formed the firm? 15:44:42
18 A. Yes, it has. 15:44:45
19 Q. Has -- to your knowledge, has any data been 15:44:46
20 lost or discarded or deleted? 15:44:49
21 A. I don't -- I don't believe that has 15:44:52
22 happened. 15:44:54
23 Q. So you have backup tapes or servers with 15:44:55
24 data that go back to January 2012? 15:44:59
25 A. I'm not precisely certain of the medium on 15:45:01

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1 which this is all done and how this is all done, but 15:45:05

2 I believe we have everything. 15:45:08

3 Q. And how is it that you know that everything 15:45:09

4 has been preserved and nothing has been deleted? 15:45:12

5 A. Well, I haven't deleted anything. 15:45:16

6 Q. What -- what about your partner? 15:45:20

7 A. I don't believe he has deleted anything, 15:45:21

8 either. 15:45:23

9 Q. So if we looked at your e-mail we would 15:45:23

10 find folders and files going back to January -- 15:45:26

11 A. Yes, you would. 15:45:28

12 Q. -- 2012? 15:45:29

13 A. Yes, you would. 15:45:29

14 Q. Do you e-mail with your clients, any of the 15:45:30

15 Tolkiens? 15:45:35

16 A. I e-mail with some of the Tol- -- the 15:45:36

17 directors and trustees. 15:45:38

18 (Pages 218 through 220 are

19 marked confidential and are bound

20 under separate cover. The

21 nonconfidential portion of this

22 transcript continues on page 221.)

23

24

25

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1 Q. Okay. Did you provide all your e-mail 15:48:21
2 files, your electronic files from your current firm 15:48:24
3 which you said have all been preserved to Greenberg 15:48:28
4 Glusker? 15:48:32
5 A. I don't recall. 15:48:32
6 Q. Have you made any copies of the tapes, the 15:48:46
7 computer tapes -- 15:48:48
8 A. No. 15:48:49
9 Q. -- to provide to the firm? 15:48:49
10 A. No. 15:48:50
11 Q. Do you e-mail to members of the Tolkien 15:48:59
12 family? 15:49:02
13 MS. ESKENAZI: Objection. Asked and 15:49:03
14 answered. 15:49:04
15 BY MR. PETROCELLI: 15:49:04
16 Q. I'm told you said yes. 15:49:07
17 A. I e-mail -- 15:49:09
18 Q. Which members do you -- 15:49:10
19 A. -- some of them. 15:49:11
20 Q. -- do you e-mail with? 15:49:12
21 A. I e-mail Baillie Tolkien, Michael Tolkien, 15:49:13
22 and Simon Tolkien. 15:49:22
23 Q. The -- what kind of -- what is the current 15:49:23
24 health and condition of Christopher Tolkien? 15:49:48
25 MS. ESKENAZI: Objection. Relevance. 15:49:53

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1 THE WITNESS: I'm not a -- I'm not a doctor 15:49:55
2 and I don't know about his medical -- 15:50:00
3 BY MR. PETROCELLI: 15:50:01
4 Q. I thought you were a doctor. I was jealous 15:50:02
5 that you got to introduce yourself as a doctor. 15:50:03
6 A. No, so sorry. 15:50:05
7 Q. Is he in good health? 15:50:07
8 MS. ESKENAZI: Objection. 15:50:10
9 BY MR. PETROCELLI: 15:50:10
10 Q. To your knowledge? 15:50:11
11 A. As far as I know, he is a well man. 15:50:12
12 Q. Okay. When is the last time you've had a 15:50:13
13 communication with him about this case? 15:50:18
14 A. Just before I left to come to the 15:50:20
15 deposition. 15:50:30
16 Q. The -- is it accurate that the -- the 15:50:30
17 Tolkien Estate owns all the copyrights in The Lord 15:50:37
18 of the Rings outside of the U.S.? 15:50:47
19 A. Is it the case that the Tolkien Estate 15:50:50
20 Limited owns -- no, that's not correct. 15:50:57
21 Q. The Tolkien Estate Limited owns all of the 15:51:03
22 copyrights in The Lord of the Rings outside of the 15:51:08
23 U.S., except for the HarperCollins interest? 15:51:10
24 A. Correct. 15:51:13
25 Q. Okay. And the Tolkien Estate Limited owns 15:51:13

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1 all of the copyrights in The Hobbit worldwide? 15:51:17

2 A. That's correct, except that under the 15:51:21

3 contract with -- for the publication of The Hobbit 15:51:29

4 with the predecessor in interest of HarperCollins, 15:51:32

5 the publisher has an interest in that copyright. 15:51:37

6 Q. Okay. And the -- the Tolkien Trust owns 15:51:41

7 the copyrights in The Lord of the Rings in the U.S., 15:51:47

8 is that correct, except for the HarperCollins 15:51:50

9 interest? 15:51:52

10 A. Correct. 15:51:53

11 Q. Okay. Since the time that you've been 15:51:58

12 working on Tolkien matters going back to 1992 -- 15:52:00

13 well, let me -- let me withdraw that. 15:52:08

14 You -- before showing up for this 15:52:10

15 deposition today, have you spoken to any person 15:52:21

16 other than a lawyer from Greenberg regarding the 15:52:27

17 deposition? 15:52:32

18 MS. ESKENAZI: Objection. Vague and 15:52:36

19 ambiguous. 15:52:38

20 THE WITNESS: My clients know I'm here on 15:52:39

21 deposition. 15:52:41

22 BY MR. PETROCELLI: 15:52:41

23 Q. By the "clients," you're referring to the 15:52:42

24 directors of the two entities? 15:52:44

25 A. Yes. 15:52:46

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1 Q. Have you spoken to anybody who's neither a 15:52:48
2 client nor a lawyer at the Greenberg firm about 15:52:51
3 the -- about your deposition and about your 15:52:57
4 anticipated testimony? 15:52:58

5 A. No. 15:52:59

6 Q. Okay. 15:53:02

7 A. Well, no. 15:53:02

8 Q. You hesitated? 15:53:03

9 A. Yes, because I'm -- I'm trying to make the 15:53:06
10 distinction between telling somebody I'm going to do 15:53:07
11 a deposition -- 15:53:10

12 Q. Right. 15:53:11

13 A. -- and the subject matter of the testimony. 15:53:12

14 Q. Right. Have you -- since the time this 15:53:13
15 lawsuit was filed, and even in the events before the 15:53:14
16 filing of the lawsuit, have you spoken to anybody 15:53:18
17 who might be considered a witness to these 15:53:24
18 proceedings? 15:53:26

19 MS. ESKENAZI: Objection. Vague and 15:53:26
20 ambiguous. 15:53:34

21 THE WITNESS: Well, I think the directors 15:53:34
22 and trustees are potential witnesses, aren't they? 15:53:36

23 BY MR. PETROCELLI: 15:53:40

24 Q. You mean your clients that we've talked 15:53:40
25 about? 15:53:42

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1 A. Yes. 15:53:42

2 Q. Okay. Besides -- 15:53:42

3 A. Sorry. 15:53:42

4 Q. Besides the members of the Tolkien family 15:53:43

5 whom you've identified, have you spoken to anybody 15:53:44

6 else about the issues in this case, going back to 15:53:47

7 the -- the time period even before it was filed all 15:53:52

8 the way to the present? So that would include 15:53:54

9 people involved in the making of the contracts, 15:53:57

10 lawyers who represented the various interests over 15:54:00

11 the years, anybody? 15:54:04

12 MS. ESKENAZI: Objection. Vague and 15:54:06

13 ambiguous. Compound. 15:54:07

14 THE WITNESS: That's too vague a question 15:54:09

15 to answer. If you can limit it in time, perhaps. 15:54:10

16 BY MR. PETROCELLI: 15:54:10

17 Q. Well, how about since 2010 to the present? 15:54:16

18 A. So in addition to discussing the case with 15:54:20

19 Greenberg Glusker, and my clients, I've discussed it 15:54:23

20 with HarperCollins. 15:54:28

21 Q. And who at HarperCollins? 15:54:30

22 MS. ESKENAZI: Again, to -- I'm going to 15:54:33

23 let the witness answer the question to the extent 15:54:35

24 that it doesn't -- that there's an agreement that it 15:54:37

25 won't waive attorney-client privilege. 15:54:40

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1 MR. PETROCELLI: You understand we don't 15:54:43
2 agree with the privilege, but we'll agree that 15:54:44
3 answering the question doesn't waive it. 15:54:46
4 THE WITNESS: Yeah, communications with 15:54:48
5 HarperCollins are with their head of legal and 15:54:52
6 business affairs. 15:54:56
7 BY MR. PETROCELLI: 15:54:56
8 Q. Who -- 15:54:58
9 A. His name is Simon Dowson-Collin- -- 15:54:59
10 Collins. 15:55:02
11 Q. Do you want to spell that for the reporter? 15:55:02
12 A. D-o-w-s-o-n, C-o double l i-n-s. 15:55:04
13 Q. How long have you been in contact with 15:55:16
14 Mr. -- is it Dowson-Collins? 15:55:19
15 A. Yes. 15:55:21
16 Q. Is that one name? 15:55:21
17 A. I've never been sure whether it's two names 15:55:24
18 or one. 15:55:27
19 Q. How long have you been in touch with 15:55:28
20 Mr. Dowson-Collins about the issues in this case? 15:55:31
21 A. Since the issues in this case arose. 15:55:36
22 Q. When -- when did your contact with him 15:55:39
23 begin? 15:55:41
24 A. When he joined HarperCollins. 15:55:41
25 Q. When was that? 15:55:42

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1 A. I don't recall. 15:55:43

2 Q. Was it before 2010? 15:55:44

3 A. Yes. 15:55:46

4 Q. Long before then? 15:55:48

5 MS. ESKENAZI: Objection. Calls for 15:55:53

6 speculation. Lacks foundation. 15:55:55

7 THE WITNESS: I'm not -- I'm not certain 15:55:55

8 when he joined the firm. 15:55:56

9 BY MR. PETROCELLI: 15:55:56

10 Q. And where is he officed? 15:55:58

11 A. His office is in the HarperCollins building 15:55:59

12 in London. 15:56:03

13 Q. Okay. And is there anybody else there 15:56:05

14 that -- with whom you've been in contact since the 15:56:07

15 time that he has been there regarding the matters 15:56:09

16 involved in this case? 15:56:12

17 A. I'm in contact with David Brawn there, who 15:56:13

18 deals with Tolkien publishing. But I haven't 15:56:18

19 discussed with him the issues in this case. 15:56:21

20 Q. And prior to Mr. Dowson-Collins, who are -- 15:56:24

21 were you in touch with anybody else there regarding 15:56:32

22 legal issues related to this case? 15:56:37

23 A. Before -- 15:56:40

24 MS. ESKENAZI: Objection. Vague and 15:56:40

25 ambiguous. 15:56:42

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1 THE WITNESS: Before Mr. Dowson-Collins 15:56:42
2 assumed the position of head of legal and business 15:56:46
3 affairs, the incumbent was an Adrian -- a person 15:56:48
4 called Adrian Laing, so I used to communicate with 15:56:54
5 him. 15:56:58
6 BY MR. PETROCELLI: 15:56:58
7 Q. We've seen his name in the correspondence. 15:56:58
8 A. Yes. 15:57:00
9 Q. And you've indicated your firm doesn't 15:57:02
10 represent HarperCollins, correct? 15:57:05
11 A. It -- it's not retained as lawyers by 15:57:07
12 HarperCollins. But as -- as we've discussed, when 15:57:11
13 you were referring to that ownership of rights, we 15:57:14
14 have joint interests in The Hobbit and The Lord of 15:57:18
15 the Rings copyrights and the contracts downstream of 15:57:23
16 those copyrights. 15:57:26
17 Q. Do you have any document or agreement 15:57:27
18 between the -- between HarperCollins and your 15:57:29
19 clients regarding retaining joint counsel or being 15:57:32
20 joint clients in a legal matter or anything of that 15:57:41
21 nature? 15:57:42
22 A. There's nothing in writing. We -- we've 15:57:43
23 had a relationship with HarperCollins now for some 15:57:44
24 20 years and we -- our agreement in these matters 15:57:47
25 is -- is -- is part of the course of dealings. 15:57:52

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1	There's nothing in writing.	15:57:54
2	Q. Okay. Do you e-mail Mr. Dowson-Collins?	15:58:01
3	A. Yes.	15:58:04
4	Q. And your e-mails with HarperCollins,	15:58:05
5	including Mr. Dowson-Collins, are still in your	15:58:09
6	e-mail --	15:58:12
7	A. Yes.	15:58:12
8	Q. -- files?	15:58:13
9	And you were e-mailing him when you were at	15:58:13
10	Manches?	15:58:18
11	A. Yes, he was at HarperCollins at that time.	15:58:18
12	Q. Okay. And as you sit here now, you don't	15:58:20
13	know whether all of Manches' electronic data and	15:58:25
14	e-mails have been preserved; is that right?	15:58:28
15	MS. ESKENAZI: Well, to the extent that you	15:58:33
16	know that without having to divulge any	15:58:35
17	attorney-client privileged information, you can	15:58:39
18	answer.	15:58:40
19	THE WITNESS: I only have an understanding	15:58:41
20	of the answer to your question from information	15:58:46
21	communicated to me by Ms. Eskenazi.	15:58:49
22	BY MR. PETROCELLI:	15:58:49
23	Q. Are you a witness in this case?	15:58:56
24	MS. ESKENAZI: Objection. Vague and	15:58:57
25	ambiguous.	15:58:59

1 THE WITNESS: I assumed from the fact that 15:59:01
2 I was being deposed that I was a witness. But I 15:59:03
3 don't really understand your question. 15:59:06
4 BY MR. PETROCELLI: 15:59:06
5 Q. Well, when do you anticipate testifying in 15:59:08
6 this -- in this case on behalf of your clients? 15:59:11
7 MS. ESKENAZI: Objection. Vague and 15:59:15
8 ambiguous. Also calls for speculation. Lacks 15:59:17
9 foundation. Calls for attorney-client privileged 15:59:21
10 information. 15:59:23
11 So to the extent that your information 15:59:24
12 comes from counsel, you need to carve that 15:59:27
13 information out. If you can answer the question 15:59:30
14 without reference to divulging information you might 15:59:32
15 have received from counsel, you're welcome to 15:59:36
16 answer. 15:59:39
17 THE WITNESS: I don't understand the 15:59:41
18 question. 15:59:41
19 BY MR. PETROCELLI: 15:59:41
20 Q. Do you anticipate providing testimony in 15:59:43
21 support of the plaintiff's position in this case? 15:59:47
22 MS. ESKENAZI: Same objections. Plus vague 15:59:52
23 and ambiguous. 15:59:57
24 THE WITNESS: Perhaps I can answer it this 15:59:57
25 way: If I'm called upon to give testimony on behalf 15:59:58

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1 of those clients, then I will do so. 16:00:01

2 BY MR. PETROCELLI: 16:00:01

3 Q. Okay. Do you have a financial interest in 16:00:04

4 this case? 16:00:08

5 A. I don't. 16:00:08

6 Q. Do you have any agreements with your 16:00:09

7 clients or does your firm have any agreements with 16:00:14

8 your clients, the Tolkiens, in any way related to 16:00:17

9 this lawsuit? 16:00:23

10 A. No. 16:00:23

11 Q. Do -- 16:00:26

12 A. The only -- 16:00:26

13 MS. ESKENAZI: Objection. Calls for 16:00:27

14 attorney-client privileged information. 16:00:30

15 BY MR. PETROCELLI: 16:00:30

16 Q. You can answer. 16:00:32

17 MS. ESKENAZI: You can only answer to the 16:00:34

18 extent you're not divulging information that is 16:00:36

19 between you and your clients. 16:00:40

20 MR. PETROCELLI: She is required to fully 16:00:41

21 divulge all financial entanglements that she has 16:00:45

22 with these clients. If you want to -- if she's 16:00:48

23 planning to testify. 16:00:51

24 THE WITNESS: Can I answer the question in 16:00:53

25 this way? 16:00:55

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1 BY MR. PETROCELLI: 16:00:55

2 Q. You can answer the question in the way I 16:00:56

3 asked it, please. Not your way. You want me to 16:00:57

4 repeat the question? 16:01:01

5 A. Yes, please. 16:01:02

6 Q. Okay. We'll start all over again. 16:01:03

7 Do you have any agreements or arrangements, 16:01:04

8 whether they're written, oral or based on conduct, 16:01:10

9 by which you or your firm may financially benefit 16:01:14

10 from this lawsuit? 16:01:21

11 A. No. 16:01:22

12 Q. Okay. Do you -- do you charge your -- the 16:01:25

13 Tolkiens, your clients, for the time you spent 16:01:28

14 dealing with this case? 16:01:33

15 A. Yes, I do. 16:01:34

16 Q. How do you charge them? 16:01:35

17 A. In the same way as I charge any other 16:01:37

18 client for the work I do for that client, pursuant 16:01:39

19 to the time recorded. 16:01:43

20 Q. It's an hourly fee? 16:01:46

21 A. It's an -- there is an hourly rate. 16:01:49

22 Q. And there's something over and above the 16:01:51

23 hourly rate? 16:01:54

24 A. No. 16:01:55

25 Q. Well, is there any other method of 16:01:57

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1 compensation that you receive, other than your 16:01:59

2 recording your hours, times the hourly rate? 16:02:01

3 A. No. 16:02:04

4 Q. All right. Is your firm on any kind of 16:02:06

5 retainer? 16:02:08

6 A. No. 16:02:09

7 (Pages 234 through 235 are
8 marked confidential and are bound
9 under separate cover. The
10 nonconfidential portion of this
11 transcript continues on page 236.)
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1 Q. Are you charging for the time that you have 16:03:22
2 spent preparing for this deposition? You said 16:03:29
3 you've been here since last week, you've had 16:03:32
4 numerous meetings, you're here all day today. 16:03:34
5 A. We haven't -- we haven't made a charge for 16:03:37
6 that time yet. 16:03:40
7 Q. Do you intend to? 16:03:41
8 A. Yes. 16:03:42
9 Q. Okay. What is your hourly rate? 16:03:43
10 A. It's 325 pounds per hour. 16:03:44
11 Q. Okay. And it's been the same since 2012? 16:03:49
12 A. Yes. 16:03:52
13 Q. And what is Mr. Maier's rate? 16:03:54
14 A. The same. 16:03:55
15 Q. When did you first retain the Greenberg 16:03:56
16 firm? 16:04:10
17 MS. ESKENAZI: Objection. Vague and 16:04:12
18 ambiguous. 16:04:12
19 BY MR. PETROCELLI: 16:04:12
20 Q. I meant in connection with this matter. 16:04:16
21 MS. ESKENAZI: It's still vague and 16:04:22
22 ambiguous. 16:04:28
23 THE WITNESS: Our relationship with the 16:04:28
24 Greenberg Glusker firm goes back to The Lord of the 16:04:29
25 Rings film participation litigation and we have 16:04:35

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1 continued to have that relationship. 16:04:40

2 BY MR. PETROCELLI: 16:04:40

3 Q. Have you -- do you know what year that was, 16:04:43

4 approximately? 16:04:46

5 A. The year of the litigation or the year of 16:04:47

6 Greenberg becoming involved? 16:04:50

7 Q. Greenberg. 16:04:53

8 A. It would have been shortly before the -- 16:04:53

9 the commencement of The Lord of the Rings film 16:04:57

10 partic- -- participation. 16:05:00

11 Q. What year was that? 16:05:01

12 A. I think that was -- that litigation was 16:05:03

13 commenced at the beginning of 2008 so, to the best 16:05:04

14 of my recollection, 2007. But I can't be sure. 16:05:10

15 Q. Have you -- since the time that you -- you 16:05:15

16 didn't retain the Greenberg firm, your clients have 16:05:24

17 retained the Greenberg firm, correct? 16:05:27

18 A. Correct. 16:05:29

19 Q. Okay. Since the time your clients have 16:05:31

20 retained the Greenberg firm in approximately 2007, 16:05:32

21 have you or they been in contact with any other 16:05:38

22 United States law firms or lawyers regarding this 16:05:42

23 matter or the events involved in this matter? 16:05:47

24 A. Since retaining -- sorry. If you wouldn't 16:05:49

25 mind just asking that question again so I have it 16:05:57

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1 clear. 16:05:59

2 Q. Sure. Since the Greenberg firm was 16:06:00

3 retained by your clients, have you or your clients 16:06:02

4 been in contact with any other American law firms 16:06:04

5 regarding this matter or the events at issue in this 16:06:07

6 matter? 16:06:09

7 A. No. 16:06:10

8 Q. Okay. 16:06:10

9 A. Not as far as I'm aware. 16:06:14

10 Q. That's as far as you know, right? 16:06:15

11 A. Yes. 16:06:17

12 Q. So I've seen, in reviewing the documents, 16:06:19

13 that there were other American law firms involved 16:06:21

14 from time to time, including Jeremy Nussbaum at Kay 16:06:25

15 Collyer & Boose, is it? 16:06:28

16 A. Yes. 16:06:30

17 Q. In New York? 16:06:30

18 A. Yes. 16:06:31

19 Q. Right. And then there's Paul Slevin, at -- 16:06:32

20 I can't even pronounce it. Szold -- 16:06:37

21 A. Szold & Brandwen. 16:06:38

22 Q. Szold & Brandwen, right? 16:06:40

23 And Molly will give you those spellings. 16:06:42

24 Have you been in touch with anybody at -- 16:06:46

25 at those law firms regarding this case in -- since 16:06:48

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1 the time it was filed? 16:06:52

2 A. No. 16:06:53

3 Q. What about before it was filed? 16:06:54

4 A. No. 16:06:55

5 Q. Do you know whether -- 16:06:57

6 MS. ESKENAZI: Well, I'm going to object as 16:06:58

7 vague and ambiguous. 16:07:00

8 BY MR. PETROCELLI: 16:07:00

9 Q. Is Mr. Nussbaum deceased? 16:07:02

10 A. He is. 16:07:03

11 Q. Okay. Do you know when the -- the 16:07:04

12 Tolkiens -- if I say "Tolkiens," I'm referring to 16:07:08

13 either the Estate or the -- the two entities that 16:07:10

14 you described, okay? 16:07:13

15 A. Right. 16:07:13

16 Q. Do you know when the Tolkiens stopped using 16:07:14

17 Mr. Nussbaum's firm? 16:07:19

18 MS. ESKENAZI: Objection. Assumes facts 16:07:22

19 not in evidence. 16:07:28

20 THE WITNESS: In effect, they haven't. 16:07:28

21 BY MR. PETROCELLI: 16:07:28

22 Q. They still work for the Tolkiens? 16:07:30

23 A. Well, it isn't -- it isn't that firm. 16:07:33

24 Q. It merged into another firm? 16:07:35

25 A. The firm when Mr. Nussbaum was there was 16:07:38

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1	called Kay & Boose and --	16:07:41
2	Q. Kay what?	16:07:44
3	A. Kay, K-a-y, & Boose, B-o-o-s-e. And that	16:07:45
4	firm merged with a firm called Davis Wright	16:07:55
5	Tremaine.	16:07:59
6	Q. In -- and do you deal with folks at Davis	16:07:59
7	Wright & Tremaine?	16:08:04
8	A. Yes, I do.	16:08:04
9	Q. Regarding the Tolkiens?	16:08:05
10	A. Yes.	16:08:06
11	Q. Is that the New York office?	16:08:09
12	A. Yes, it is.	16:08:10
13	Q. And who's your principal contact there?	16:08:10
14	A. I have two principal contacts there.	16:08:13
15	Q. And who are they?	16:08:16
16	A. They're And- -- Andrew Boose and Marsha	16:08:17
17	Paul.	16:08:21
18	Q. Marsha who?	16:08:24
19	A. Marsha Paul.	16:08:25
20	Q. "Paul"? What kind of matters do they	16:08:26
21	handle?	16:08:30
22	A. Any U.S. -- I think -- well, no, that's	16:08:31
23	not, correct.	16:08:36
24	They deal with different U.S. legal issues	16:08:37
25	apart from those engaged in this case.	16:08:46

1 MS. ESKENAZI: Well, again, to the extent 16:08:50
2 that Mr. Petrocelli may be inquiring as to what -- 16:08:51
3 specifically what was discussed between you and the 16:08:57
4 Kay Boose or the Davis Wright Tremaine firm, he's 16:09:03
5 not entitled to that information and I would 16:09:07
6 instruct you not to answer. So you need to carve 16:09:08
7 out that information from your answer. 16:09:10
8 THE WITNESS: Davis Wright -- Davis Wright 16:09:17
9 Tremaine do certain types of work for the Tolkien 16:09:19
10 Estate and the Tolkien Trust, other forms of legal 16:09:24
11 work. 16:09:26
12 BY MR. PETROCELLI: 16:09:26
13 Q. What type of work? 16:09:28
14 MS. ESKENAZI: You can talk about subject 16:09:31
15 matter -- 16:09:32
16 THE WITNESS: Right. 16:09:32
17 MS. ESKENAZI: -- but you cannot discuss 16:09:32
18 any specific issues that were discussed with them. 16:09:38
19 THE WITNESS: Copyright registrations, 16:09:41
20 copyright documentation, generally. I was trying to 16:09:44
21 think about a phrase. Rights issues. Scope for 16:09:54
22 taking action in certain circumstances. Mainly 16:10:08
23 where rights such as copyright and ancillary rights 16:10:14
24 are involved. 16:10:18
25 BY MR. PETROCELLI: 16:10:18

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1 Q. Do they do any trademark work? 16:10:22

2 A. Yes, they do. 16:10:24

3 Q. How -- when did the relationship with -- 16:10:27

4 was Mr. Nussbaum the principal lawyer that the 16:10:40

5 Tolkiens or you dealt with at that firm prior to his 16:10:45

6 death? 16:10:47

7 MS. ESKENAZI: Objection. Vague and 16:10:52

8 ambiguous. 16:10:52

9 BY MR. PETROCELLI: 16:10:52

10 Q. Or was it Mr. Boose as well? 16:10:54

11 A. He was, I think, involved and also Marsha 16:10:55

12 Paul. 16:10:58

13 Q. Marsha Paul? 16:10:58

14 A. Yep. 16:10:59

15 Q. And Marsha is still there now? 16:11:00

16 A. Yes. 16:11:02

17 Q. And what is Mr. Boose's first name? 16:11:02

18 A. Andrew. 16:11:04

19 Q. Andrew. And he's also been involved in 16:11:05

20 Tolkien work? 16:11:07

21 A. Yes. 16:11:08

22 Q. Okay. And do you know when the 16:11:09

23 relationship with that firm began? 16:11:11

24 MS. ESKENAZI: Objection. Vague and 16:11:17

25 ambiguous. 16:11:17

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1 THE WITNESS: I don't recall because to me 16:11:17
2 it seemed seamless. It was -- it was Kay & Boose 16:11:18
3 and then it was something else. I don't know what 16:11:23
4 day that was. 16:11:24
5 BY MR. PETROCELLI: 16:11:29
6 Q. Well, when it was Kay & Boose, do you know 16:11:29
7 when that relationship started? That was the first 16:11:32
8 iteration of the firm, right? 16:11:33
9 A. Yes. 16:11:33
10 Q. And when -- when did the Tolkiens retain 16:11:36
11 that firm for the first time? 16:11:38
12 A. In the '90s, the second half of the '90s. 16:11:45
13 Q. And before retaining the Kay Boose firm, 16:11:47
14 were there any other U.S. law firms with whom the 16:11:51
15 Tolkiens had a relationship? 16:11:57
16 A. Yes. 16:11:57
17 Q. And who were they? 16:11:58
18 A. Szold & Brandwen. 16:11:59
19 Q. And who are your -- and you communicated 16:12:01
20 with them from time to time on behalf of the 16:12:04
21 Tolkiens? 16:12:06
22 A. Yes. 16:12:07
23 Q. And same -- same was true with the 16:12:07
24 subsequent firm, with Kay Boose? 16:12:10
25 A. Yes. 16:12:12

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1 Q. You were -- would it fair -- be fair to say 16:12:13
2 you were the principal point of contact for the 16:12:14
3 Tolkiens? 16:12:16
4 A. Yes, that would be reasonable. 16:12:16
5 Q. Both for Kay Boose as well as Szold 16:12:24
6 Brandwen? 16:12:27
7 A. Well, the relationship with Szold & 16:12:27
8 Brandwen went back before my time. 16:12:31
9 Q. To Mr. Williamson? 16:12:32
10 A. Yes. 16:12:33
11 Q. Was he the main point of contact before you 16:12:34
12 with that firm? 16:12:36
13 A. Yes. 16:12:37
14 Q. Okay. And do you know how long that firm 16:12:38
15 went -- went back in terms of its relationship with 16:12:40
16 the Tolkiens? 16:12:43
17 A. I believe it went back to the 1960s. 16:12:44
18 Q. And was that firm involved in the -- in the 16:12:47
19 work related to the 1969 agreements? 16:12:52
20 MS. ESKENAZI: Objection. Calls for 16:12:56
21 speculation. Lacks foundation. 16:13:00
22 THE WITNESS: I think they had a role to 16:13:00
23 play. 16:13:02
24 BY MR. PETROCELLI: 16:13:02
25 Q. Have you spoken to anybody who was actually 16:13:03

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1 involved in the negotiation and drafting of the 1969 16:13:05
2 agreements that are at issue in this case? 16:13:09
3 MS. ESKENAZI: Well, to the extent that 16:13:13
4 that requires divulging attorney-client privileged 16:13:16
5 information, you need to carve that out. 16:13:18
6 BY MR. PETROCELLI: 16:13:18
7 Q. I'm asking for -- I don't understand how 16:13:23
8 that could possibly call for privileged information, 16:13:25
9 so I don't want you to carve anything out. I'm just 16:13:27
10 asking whether you had a conversation with anybody 16:13:31
11 who was directly involved in the 1969 contract, 16:13:34
12 either its negotiation or its drafting? 16:13:38
13 A. Perhaps I can answer the question this way: 16:13:41
14 Mr. Williamson was involved at that time and I have 16:13:47
15 had conversations with him. 16:13:50
16 Q. Is that the only person, to your knowledge? 16:13:52
17 A. I can't be certain about this, but 16:14:01
18 Mr. Rayner Unwin was around at that time and I 16:14:04
19 have -- until he died, I had conversations with him, 16:14:08
20 without being specific as to what those 16:14:11
21 conversations were. 16:14:14
22 Q. He's deceased now? 16:14:16
23 A. He's deceased. 16:14:18
24 Q. When did he die? 16:14:19
25 A. In the 2000s some time. 16:14:20

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1 Q. And Mr. Williamson? 16:14:25

2 A. Mr. Williamson is still alive. 16:14:27

3 Q. And to your knowledge, is he in good 16:14:29

4 health? 16:14:31

5 A. I don't think he is really in good health. 16:14:32

6 Q. In what way? 16:14:34

7 MS. ESKENAZI: Well, objection. 16:14:36

8 THE WITNESS: I don't have details of his 16:14:38

9 medical condition. But he was not -- he -- he had 16:14:39

10 memory issues at the time of the film participation 16:14:47

11 litigation and he's very physically handicapped. 16:14:52

12 BY MR. PETROCELLI: 16:14:52

13 Q. Where does he reside? 16:14:57

14 A. He lives in Oxfordshire. 16:14:58

15 Q. Besides Mr. Williamson -- and what's his 16:15:02

16 first name? 16:15:12

17 MS. LENS: Rayner. 16:15:12

18 BY MR. PETROCELLI: 16:15:12

19 Q. Rayner Unwin? Rayner Unwin, have you 16:15:13

20 spoken to anybody else who was involved in those 16:15:16

21 negotiations? 16:15:20

22 A. No, not to my knowledge. 16:15:20

23 Q. Have you ever prepared any documents, 16:15:29

24 memos, notes from talking to these folks about 16:15:33

25 the -- the negotiation of the '69 agreements? 16:15:38

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1 MS. ESKENAZI: Objection. Assumes facts 16:15:41
2 not in evidence. 16:15:43
3 THE WITNESS: Have I created memos? 16:15:50
4 BY MR. PETROCELLI: 16:15:50
5 Q. Let me -- 16:15:52
6 A. Sorry, just to understand. 16:15:53
7 Q. Let me back up. 16:15:54
8 Have you had conversations with either 16:15:56
9 Mr. Unwin or Mr. Richardson -- Mr. Williamson, 16:15:57
10 excuse me, regarding the '69 agreement, their 16:16:01
11 participation in it, their knowledge about the 16:16:06
12 agreement and so forth? 16:16:08
13 A. I don't recall having detailed discussions 16:16:10
14 on that subject with Mr. Unwin. But I had 16:16:14
15 conversations on that subject with Mr. Williamson. 16:16:17
16 Q. Did you memorialize those conversations 16:16:20
17 in -- in any way? 16:16:22
18 A. I didn't take verbatim notes of what 16:16:23
19 Mr. Williamson told me, but from time to time I made 16:16:35
20 my own notes relating to all that I learned about 16:16:37
21 the history of the Tolkien affairs. 16:16:41
22 Q. And where are those notes? 16:16:45
23 A. In the files. 16:16:46
24 Q. Where are the files? 16:16:47
25 A. They're in the storage facility. 16:16:50

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1 Q. Where -- where you've -- you've made 16:16:51
2 running notes over the years since the first time 16:16:55
3 you got involved? 16:16:58
4 A. From time to time, I would make notes for 16:16:59
5 myself. 16:17:01
6 Q. Handwritten notes? 16:17:01
7 A. Sometimes typed. 16:17:02
8 Q. Typed. And were -- were all of your notes 16:17:06
9 related to the issues in this case turned over to 16:17:09
10 counsel? 16:17:14
11 A. Well, all of the notes I would make would 16:17:14
12 go onto the file, so to the extent that the files 16:17:16
13 were turned over to Greenberg Glusker, they would 16:17:20
14 have picked up. 16:17:23
15 Q. But you don't know whether all those files, 16:17:24
16 in fact, were turned over; is that right? 16:17:26
17 A. I understand that all of the files 16:17:28
18 containing anything discoverable in this litigation 16:17:30
19 have been scanned and sent to Greenberg Glusker. 16:17:34
20 Q. How -- who -- who went through the files to 16:17:38
21 make the decision whether the contents of the files 16:17:39
22 were relevant and discoverable? 16:17:43
23 A. Greenberg Glusker. 16:17:45
24 Q. How did Greenberg get the full contents of 16:17:47
25 the files? 16:17:49

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1 A. Because we had the full contents of the 16:17:50
2 files scanned. 16:17:52
3 Q. Was -- was every single file in storage 16:17:53
4 scanned and sent to Greenberg? 16:17:56
5 A. No, because some of those files had no 16:17:58
6 relevance at all to anything to do with the Saul 16:18:01
7 Zaentz Corporation, Warner Bros. or these rights. 16:18:05
8 Q. Was Greenberg Glusker sent a list or an 16:18:07
9 inventory of files and asked to select the ones they 16:18:09
10 thought were relevant? 16:18:12
11 A. Yes. 16:18:13
12 Q. And who prepared the inventory or list of 16:18:15
13 files? 16:18:19
14 A. The list of files already existed because 16:18:19
15 it consisted of those in storage. 16:18:22
16 Q. Does it go back to Manches? 16:18:24
17 A. It goes back to Morrell Peel & Gamlen. 16:18:27
18 Q. The firms -- the law firms maintained those 16:18:31
19 files -- maintained those lists? Those are actual 16:18:34
20 lists prepared by the firms that you got copies of? 16:18:36
21 A. Well, I think in -- during my tenure, I 16:18:38
22 made up those lists. From lists that Mr. Williamson 16:18:46
23 had, I would add to them. 16:18:48
24 Q. I think you said at the outset of the 16:18:50
25 examination that in preparation for this deposition 16:19:04

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1 you reviewed documents that you believe may be 16:19:05
2 privileged. 16:19:08
3 Do you recall that? 16:19:09
4 A. Yes, I think I was mistaken. 16:19:11
5 Q. How did you learn that you were mistaken? 16:19:14
6 You spoke to counsel about that? 16:19:16
7 MS. ESKENAZI: Objection. Calls for 16:19:17
8 attorney-client privileged information. Instruct 16:19:19
9 not to answer. 16:19:21
10 BY MR. PETROCELLI: 16:19:21
11 Q. How did you learn you were mistaken? 16:19:22
12 MS. ESKENAZI: Instruct not to answer. 16:19:23
13 Attorney-client privilege. 16:19:25
14 BY MR. PETROCELLI: 16:19:25
15 Q. When did you learn you were mistaken? 16:19:27
16 A. I'm instructed not to answer and I'm 16:19:29
17 following that advice. 16:19:31
18 Q. Well, you weren't instructed on the last 16:19:36
19 question. 16:19:38
20 A. Would you like to ask the question again. 16:19:38
21 Q. Yeah. When did you learn that you were 16:19:40
22 mistaken? 16:19:41
23 MS. ESKENAZI: You can answer when. 16:19:42
24 THE WITNESS: I understood that -- I 16:19:43
25 learned that at lunchtime today. 16:19:45

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1 BY MR. PETROCELLI: 16:19:45

2 Q. Okay. Who did you have lunch with? 16:19:48

3 A. Ms. Eskenazi and Ms. Moriarty. 16:19:50

4 Q. Anybody else present? 16:19:55

5 A. Mr. Cestero was present. 16:19:56

6 Q. In the course of your meetings regarding 16:19:58

7 the deposition going back to last Thursday, who was 16:20:02

8 present at all those meetings? 16:20:05

9 MS. ESKENAZI: Objection. Asked and 16:20:07

10 answered. 16:20:08

11 You can answer yet again. 16:20:09

12 THE WITNESS: Ms. Eskenazi, Ms. Moriarty, 16:20:10

13 Mr. -- Mr. Cestero and from time to time, Steven 16:20:16

14 Maier. 16:20:21

15 BY MR. PETROCELLI: 16:20:25

16 Q. And he's here in town now? 16:20:25

17 A. He was this morning. 16:20:27

18 MS. ESKENAZI: Objection. 16:20:28

19 BY MR. PETROCELLI: 16:20:28

20 Q. How were you mistaken about the privileged 16:20:30

21 documents? 16:20:33

22 A. Because I wasn't -- I wasn't aware that all 16:20:33

23 of the documents that I had been shown were 16:20:36

24 documents disclosed in the case. 16:20:39

25 Q. So your testimony now is that all the 16:20:42

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1 documents you reviewed were documents disclosed in 16:20:45
2 the case? 16:20:49
3 A. That's right, because that's what I've been 16:20:49
4 told. 16:20:52
5 Q. And who told you that? 16:20:52
6 A. Well, what I have been told is that all 16:20:54
7 of -- 16:20:57
8 MS. ESKENAZI: Well -- well, to the extent 16:20:57
9 that you were provided information from counsel it's 16:20:59
10 attorney-client privileged information and 16:21:04
11 Mr. Petrocelli is not entitled to that information 16:21:06
12 so I'm going to instruct not to answer. 16:21:08
13 THE WITNESS: I'm following that 16:21:11
14 instruction. 16:21:12
15 BY MR. PETROCELLI: 16:21:12
16 Q. Who told you that you were mistaken and who 16:21:14
17 told you that the documents that you reviewed were 16:21:16
18 all disclosed in the lawsuit? 16:21:20
19 MS. ESKENAZI: Instruct not to answer. 16:21:21
20 Attorney-client privileged information. 16:21:24
21 BY MR. PETROCELLI: 16:21:24
22 Q. What were the documents that you reviewed? 16:21:26
23 A. I reviewed a quantity of documents. 16:21:28
24 Q. Can you identify them? 16:21:31
25 A. No. 16:21:33

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1 Q. Can you identify any of them? 16:21:34

2 A. I can't make a list of the documents I 16:21:35

3 reviewed. 16:21:43

4 Q. Did you not understand my question? 16:21:43

5 MS. ESKENAZI: And she answered your 16:21:47

6 question. If you'd like to pose another question 16:21:48

7 you may, Mr. Petrocelli. 16:21:51

8 BY MR. PETROCELLI: 16:21:51

9 Q. I didn't ask you for a list. I asked you 16:21:53

10 if you could identify any of them. 16:21:54

11 A. What do you mean by "identify"? 16:21:56

12 Q. Describe them. Tell us what they are. 16:21:58

13 A. I reviewed such -- such a quantity. 16:22:04

14 MS. ESKENAZI: Well, I'm going to object 16:22:06

15 that to the extent you're asking for what counsel 16:22:08

16 showed this witness, without attaching that to 16:22:11

17 anything that refreshed her recollection, that's 16:22:15

18 privileged information and you're not entitled to 16:22:18

19 it. So I'm going to instruct the witness not to 16:22:20

20 answer. 16:22:22

21 BY MR. PETROCELLI: 16:22:22

22 Q. Well, the documents that you said you 16:22:23

23 reviewed that were privileged, you said refreshed 16:22:26

24 your recollection generally. 16:22:28

25 Do you recall giving that testimony? 16:22:30

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1 A. Yes. 16:22:31

2 Q. So what were those documents that you now 16:22:31

3 say are not privileged after having lunch with your 16:22:34

4 lawyers? 16:22:36

5 A. I don't -- I don't recollect specific 16:22:37

6 documents that refreshed my recollection as to the 16:22:44

7 general sweep of the computer -- 16:22:47

8 Q. Well, what documents did you have in mind 16:22:51

9 when you gave that testimony this morning? 16:22:52

10 A. I didn't have any specific documents in 16:22:54

11 mind. 16:22:57

12 Q. And why did -- why did you say they were 16:22:57

13 privileged then? 16:22:58

14 MS. ESKENAZI: Objection. Vague and 16:22:59

15 ambiguous. 16:23:03

16 THE WITNESS: I didn't know the -- the 16:23:03

17 status of those documents that I reviewed. 16:23:07

18 BY MR. PETROCELLI: 16:23:07

19 Q. So not knowing the status of them, you just 16:23:11

20 decided to say they were privileged, is that what 16:23:14

21 you're saying? 16:23:16

22 MS. ESKENAZI: Argumentative. It's 16:23:17

23 argumentative. Asked and answered. 16:23:18

24 You can answer again. 16:23:20

25 THE WITNESS: I did not know of the 16:23:21

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1 documents I reviewed that some were -- that -- 16:23:26
2 whether any were privileged or not when I was 16:23:29
3 reviewing them, but I thought there might have been 16:23:34
4 privileged documents. 16:23:36
5 BY MR. PETROCELLI: 16:23:36
6 Q. What made you think that? 16:23:37
7 A. I -- I -- I had no reason for it. I 16:23:38
8 just -- I didn't apply my mind to the question. 16:23:41
9 Q. Have you looked at the documents again over 16:23:44
10 lunch? 16:23:50
11 A. I haven't looked at any documents over 16:23:51
12 lunch. 16:23:53
13 Q. So to be clear, despite ten minutes of 16:23:53
14 questions, you can't tell me a single piece of paper 16:23:58
15 or document that you reviewed over three or four 16:24:01
16 days of time preparing for the deposition; is that 16:24:04
17 correct? 16:24:04
18 MS. ESKENAZI: Objection. It's been asked 16:24:10
19 and answered repeatedly. 16:24:11
20 You can answer again. 16:24:11
21 THE WITNESS: I don't have anything to add 16:24:12
22 to what I've said before. 16:24:14
23 BY MR. PETROCELLI: 16:24:14
24 Q. Well, unfortunately, you have to answer my 16:24:15
25 question. I didn't ask you if you had anything to 16:24:17

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1 add. 16:24:20

2 Can you please repeat the question? 16:24:20

3 (The reporter read the record 16:24:20

4 as follows: 16:24:20

5 "QUESTION: So to be clear, 16:23:55

6 despite ten minutes of questions 16:23:56

7 you can't tell me a single piece 16:23:58

8 of paper or document that you 16:24:00

9 reviewed over three or four days 16:24:02

10 of time preparing for the 16:24:04

11 deposition; is that correct?") 16:24:05

12 THE WITNESS: I don't -- 16:24:34

13 MS. ESKENAZI: Objection. It's been asked 16:24:36

14 and answered. 16:24:36

15 You can answer again. 16:24:37

16 THE WITNESS: I don't have any specific 16:24:38

17 recollection of the documents I reviewed. 16:24:39

18 BY MR. PETROCELLI: 16:24:39

19 Q. You've identified now the two law firms 16:24:48

20 that we've talked about, the Kay Boose which is now 16:24:51

21 Davis -- 16:24:56

22 A. Wright Tremaine. 16:24:57

23 Q. -- Wright & Tremaine and we talked about 16:24:58

24 Szold Brandwen. 16:25:02

25 Are there any other American law firms with 16:25:03

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1 whom you have been in contact over the years 16:25:07
2 regarding the Tolkiens, on behalf of the Tolkiens? 16:25:10
3 MS. ESKENAZI: Objection. It's vague and 16:25:17
4 ambiguous. 16:25:20
5 THE WITNESS: We -- the Tolkien Estate has 16:25:20
6 taken advice from other U.S. attorneys at times. 16:25:28
7 BY MR. PETROCELLI: 16:25:28
8 Q. Can you identify those attorneys or the 16:25:32
9 firms? 16:25:35
10 A. I couldn't -- I couldn't give a 16:25:35
11 comprehensive list. I could -- I could give an 16:25:37
12 example. 16:25:41
13 Q. Well, give me every one you can remember. 16:25:42
14 A. The one that I remember, sitting here 16:25:45
15 today, is Loeb & Loeb. 16:25:47
16 Q. And who at Loeb & Loeb? 16:25:49
17 A. I can't remember his name. It's not coming 16:26:07
18 to me. 16:26:10
19 Q. Do you know the -- the office of Loeb & 16:26:11
20 Loeb? 16:26:14
21 A. It was the New York office. 16:26:14
22 Q. Do you know -- 16:26:17
23 A. Yes. It was the New York office. 16:26:20
24 Q. Do you remember the name now? 16:26:21
25 A. I can remember that they, in assisting the 16:26:22

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1 Tolkien Estate, dealt with their -- 16:26:36

2 MS. ESKENAZI: But the question was, can 16:26:39

3 you remember his name. 16:26:41

4 THE WITNESS: I can't. It may come to me. 16:26:41

5 BY MR. PETROCELLI: 16:26:41

6 Q. Do you -- do you remember the time frame 16:26:44

7 during which the firm was involved in the Tolkiens' 16:26:46

8 affairs? 16:26:50

9 A. For a few years in the middle of the 16:26:51

10 thousands. Sorry. 16:26:55

11 Q. The thousands? 16:26:57

12 A. You know, 2000 to 2010. So some -- some 16:26:58

13 point in the middle of that decade. 16:27:03

14 Q. Does the firm still do work for the 16:27:05

15 Tolkiens? 16:27:09

16 A. No. 16:27:10

17 Q. Do you know when it stopped? 16:27:12

18 MS. ESKENAZI: Objection. Assumes facts 16:27:15

19 not in evidence. 16:27:15

20 THE WITNESS: It ceased to do work for the 16:27:18

21 Tolkien Estate when representation -- they were 16:27:25

22 instructed in relation to certain matters and when 16:27:30

23 the representation in relation to those matters 16:27:33

24 passed to Greenberg Glusker they dropped out of the 16:27:35

25 picture. 16:27:38

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1 BY MR. PETROCELLI: 16:27:39

2 Q. What were the matters they were handling? 16:27:39

3 A. Matters relating to the film participation 16:27:41

4 question. 16:27:45

5 Q. Anything else? 16:27:45

6 A. Not so far as I recollect. 16:27:52

7 Q. Any other lawyers or law firms? 16:27:57

8 A. Not so far as I can recollect. 16:28:00

9 Q. Going back to the beginning of your time 16:28:04

10 with -- with Tolkiens? 16:28:06

11 A. I don't recall any others. 16:28:08

12 Q. Going beyond lawyers now, were there any 16:28:12

13 other professionals that -- with -- with whom you've 16:28:17

14 been in contact in connection with the 16:28:21

15 representation of the Tolkiens? 16:28:23

16 A. Lots of professionals. 16:28:25

17 Q. What kind of professionals? 16:28:27

18 A. Accountants -- 16:28:29

19 Q. U.S. based. 16:28:31

20 A. Oh. 16:28:32

21 Q. Yeah. 16:28:32

22 A. In relation to the film participation 16:28:37

23 litigation, the Tolkien Estate engaged auditors. 16:28:40

24 Q. You -- do you know the name of the firm? 16:28:46

25 MS. ESKENAZI: Objection. Vague. It's 16:28:53

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1 irrelevant. 16:28:54

2 THE WITNESS: I'm trying hard. I'm just 16:28:56

3 not getting the name. 16:29:03

4 BY MR. PETROCELLI: 16:29:03

5 Q. Okay. Do any professionals, U.S.-based 16:29:05

6 professionals come to mind with whom you've dealt on 16:29:10

7 behalf of the Tolkiens over the years? 16:29:13

8 A. Nothing is coming to mind. 16:29:15

9 Q. Okay. Besides your law firm -- 16:29:20

10 A. Yes. 16:29:25

11 Q. -- and the Manches firm, have there been 16:29:25

12 any other law firms that have represented the -- the 16:29:31

13 Tolkiens in connection with matters involved in this 16:29:37

14 case? 16:29:39

15 MS. ESKENAZI: Objection. Relevance. 16:29:41

16 THE WITNESS: I can remember one instance 16:29:43

17 where there was a conflict, a potential for conflict 16:29:49

18 of interest between the Tolkien Estate Limited and 16:29:54

19 the Tolkien Trust. Well, correction. The ent- -- 16:29:57

20 predecessor entity of the Tolkien Estate Limited and 16:30:02

21 one or other of those clients sought independent 16:30:07

22 legal advice. 16:30:11

23 BY MR. PETROCELLI: 16:30:11

24 Q. From what firm? 16:30:12

25 A. I think the firm's name was Farrers. 16:30:13

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1 Q. How do you spell that? 16:30:16

2 A. F-a double r e-r-s. 16:30:17

3 Q. And where is it based? 16:30:19

4 A. In London. 16:30:21

5 Q. Do you know the name of the attorney there? 16:30:21

6 A. No, I can't remember. 16:30:23

7 Q. Did you -- did you deal with that attorney 16:30:23

8 at all? 16:30:25

9 A. Only to the extent of facilitating the 16:30:25

10 transfer. 16:30:34

11 Q. Is that -- 16:30:35

12 A. The -- the referral of the client. 16:30:36

13 Q. Is that attorney still involved or that 16:30:39

14 firm? 16:30:41

15 A. Involved in? 16:30:41

16 Q. In representing the Tolkiens? 16:30:43

17 A. No. 16:30:45

18 Q. Okay. You gave -- you were questioned this 16:30:49

19 morning and shown a number of documents about the 16:30:53

20 various uses made by Zaentz and others related to 16:30:57

21 the merchandising rights. And in particular, you 16:31:04

22 were shown a number of documents concerning computer 16:31:09

23 games and platforms and online rights and so forth. 16:31:13

24 Have you ever retained a consultant or 16:31:22

25 anybody over the years to give you any advice 16:31:27

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1 regarding video games, computer games, computer 16:31:32
2 technology, online technology, Internet technology, 16:31:37
3 any of those topics? 16:31:41
4 A. Not -- not so far as I recall. 16:31:43
5 Q. What -- what have you done to educate 16:31:46
6 yourself regarding these matters? 16:31:49
7 MS. ESKENAZI: Objection. Vague and 16:31:52
8 ambiguous. 16:31:53
9 THE WITNESS: Which matters? 16:31:54
10 BY MR. PETROCELLI: 16:31:54
11 Q. Well, you indicated that you understood 16:31:56
12 that online video games that were downloaded on the 16:32:01
13 Internet involved, to some degree, some physical 16:32:09
14 object that you buy in the store. 16:32:13
15 Do you recall that testimony? 16:32:17
16 MS. ESKENAZI: Objection. Misstates the 16:32:18
17 testimony. 16:32:19
18 THE WITNESS: That does misstate my 16:32:19
19 testimony. 16:32:21
20 BY MR. PETROCELLI: 16:32:21
21 Q. How does it misstate your testimony? 16:32:21
22 A. Because I was referring to the specifics of 16:32:23
23 the agreement with the Saul Zaentz Company when 16:32:24
24 referring to purchase of computer games on physical 16:32:27
25 media. 16:32:31

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1 Q. So you have been aware since inception that 16:32:31
2 video games or -- let's take video games -- can be 16:32:38
3 downloaded onto a computer or a mobile device 16:32:45
4 without reference to any physical hardware or 16:32:51
5 physical equipment that you would buy in the store, 16:32:55
6 correct? 16:32:55

7 MS. ESKENAZI: Objection. It's vague and 16:32:58
8 ambiguous. 16:33:01

9 THE WITNESS: It's very vague and I don't 16:33:01
10 know what you mean by "from inception." 16:33:02

11 BY MR. PETROCELLI: 16:33:02

12 Q. Well, from the first time you started 16:33:05
13 working on these matters going back to 1992. 16:33:08

14 A. Right. The question is still vague. 16:33:11

15 Q. Well, you can answer it. 16:33:14

16 A. Would you like to put it to me again? 16:33:15

17 Q. Yeah. What -- when did you first learn 16:33:17
18 that certain types of technology, like video games, 16:33:21
19 for example, can be played by downloading them 16:33:31
20 without -- downloading them and playing them on the 16:33:39
21 Internet? 16:33:42

22 MS. ESKENAZI: Objection. It's vague and 16:33:43
23 ambiguous. It -- it also assumes facts not in 16:33:46
24 evidence. 16:33:48

25 THE WITNESS: You're conflating two 16:33:48

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1 concepts there. One -- 16:33:51

2 BY MR. PETROCELLI: 16:33:51

3 Q. Yeah, I'm sure I am. 16:33:54

4 A. One is how a game is played and the other 16:33:55

5 is how a game is purchased. 16:33:58

6 Q. Okay. And you said I'm conflating them. 16:34:03

7 So you're clear in your mind there's a difference, 16:34:05

8 correct? 16:34:05

9 A. I'm clear in my mind that there is a 16:34:11

10 difference between the manner -- I'm clear in my 16:34:13

11 mind that there's a difference between the -- the 16:34:17

12 manner of -- the question of purchasing and the 16:34:19

13 question of playing. 16:34:23

14 Q. And what is the difference? 16:34:23

15 A. One has to precede the other. 16:34:26

16 Q. What has to precede? 16:34:28

17 A. The purchase has to precede the playing. 16:34:29

18 Q. And what does the purchase -- what has to 16:34:31

19 be purchased to precede the playing? 16:34:35

20 MS. ESKENAZI: Objection. It's vague and 16:34:38

21 ambiguous. 16:34:45

22 THE WITNESS: In the context of the Saul 16:34:45

23 Zaentz rights, what has to be purchased is a game on 16:34:47

24 physical media, discs or cartridges, some storage 16:34:51

25 medium of that sort. 16:34:55

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1 BY MR. PETROCELLI: 16:34:55

2 Q. And you say it has to be purchased for -- 16:34:57

3 why does it have to be purchased? 16:35:00

4 A. Because that is the nature of -- of the 16:35:02

5 merchandising agreement. 16:35:04

6 Q. Okay. 16:35:04

7 A. That's what it requires. 16:35:06

8 Q. But you are aware that one does not have to 16:35:07

9 purchase an object licensed by Saul Zaentz in order 16:35:11

10 to play a down- -- a video game that's downloaded 16:35:21

11 from the Internet, right? 16:35:24

12 MS. ESKENAZI: Objection. It's vague and 16:35:26

13 ambiguous. 16:35:26

14 BY MR. PETROCELLI: 16:35:26

15 Q. You could play it on a computer purchased 16:35:27

16 at Radio Shack, correct? 16:35:29

17 MS. ESKENAZI: Objection. It's vague and 16:35:32

18 ambiguous. 16:35:35

19 THE WITNESS: Could I possibly have the 16:35:35

20 question again, please? 16:35:40

21 BY MR. PETROCELLI: 16:35:41

22 Q. Yes. You -- you -- your focus on the item 16:35:42

23 of equipment that's purchased on which -- which is 16:35:46

24 the first step in playing the game. You said it 16:35:53

25 precedes the playing of the game. You have to have 16:35:57

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1 an item that's purchased in a store, correct? 16:35:59

2 A. Can we stop there? You're referring to 16:36:02

3 equipment. I think there are two elements. There's 16:36:05

4 the equipment and the game -- 16:36:07

5 Q. Okay. 16:36:11

6 A. -- on physical media. 16:36:10

7 Q. So you're talking about going into a store 16:36:13

8 and buying a disc or some physical medium on which 16:36:17

9 the game -- the contents of the game appear, 16:36:20

10 correct? 16:36:20

11 A. Correct. 16:36:24

12 Q. Okay. And then that is taken to your home 16:36:26

13 and put into some device that enables you to play 16:36:31

14 the game, correct? 16:36:35

15 A. That's correct. 16:36:38

16 Q. Okay. Now, you -- you also are aware that 16:36:41

17 you can access such a game without walking into a 16:36:44

18 store by downloading it from the Internet, correct? 16:36:46

19 A. I became aware of that fact in the course 16:36:49

20 of the discussions leading up to this dispute. 16:36:53

21 Q. Now, what fact did you become aware of in 16:36:58

22 the discussions leading up to this suit? 16:37:01

23 A. I became aware of the assertion by the Saul 16:37:05

24 Zaentz Company that these -- this form of delivery 16:37:09

25 of a computer game existed and that they claimed the 16:37:13

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1 right to the rights in question. 16:37:17

2 Q. What form of delivery? 16:37:20

3 A. Downloadable-only games. 16:37:22

4 Q. Why did you add the word "only"? 16:37:26

5 MS. ESKENAZI: Objection. It's vague and 16:37:34

6 ambiguous. 16:37:35

7 THE WITNESS: Because -- to make a 16:37:36

8 distinction between the two kinds of games. The 16:37:38

9 kinds of game that came on physical media and this 16:37:43

10 new technology which obviated the need for physical 16:37:47

11 media. 16:37:52

12 BY MR. PETROCELLI: 16:37:52

13 Q. When did you have these discussions when 16:37:56

14 you first learned of the assertion by the Zaentz 16:37:58

15 Company that games that were downloadable-only were 16:38:04

16 covered by the license agreement? 16:38:12

17 MS. ESKENAZI: Objection. Vague and 16:38:15

18 ambiguous. Misstates the testimony. Assumes facts 16:38:16

19 not in evidence. 16:38:18

20 THE WITNESS: This issue arose out of the 16:38:20

21 discussion about online gaming. 16:38:25

22 BY MR. PETROCELLI: 16:38:25

23 Q. When -- when did you first learn of that 16:38:29

24 assertion? That's my question. 16:38:33

25 A. I can't be specific as to when. But it was 16:38:36

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1 at the time that we discovered that Warner Bros. and 16:38:39
2 the Saul Zaentz Company were -- had licensed online 16:38:43
3 gambling. 16:38:47

4 Q. Okay. So the lawsuit says that that 16:38:48
5 occurred in -- the complaint says that occurred in 16:38:52
6 September of 2010, in paragraph 45. 16:38:58

7 So does that refresh your recollection that 16:39:03
8 that would be the time frame? 16:39:04

9 A. That was -- that was the time frame when we 16:39:06
10 became aware of online gambling. 16:39:08

11 Q. Okay. Now, before September 2010 -- 16:39:10

12 MS. ESKENAZI: Well, objection. 16:39:15

13 MR. PETROCELLI: I didn't finish my 16:39:18
14 question. 16:39:20

15 MS. ESKENAZI: I -- I'm interposing an 16:39:20
16 objection to the prior question that it's vague and 16:39:22
17 ambiguous. 16:39:25

18 MR. PETROCELLI: Okay. 16:39:25

19 Q. Before September 2010, had you ever heard 16:39:26
20 of the idea, of the notion, that a game could be 16:39:32
21 downloadable-only? 16:39:37

22 A. I had not heard that assertion from the 16:39:40
23 Saul Zaentz Company. 16:39:43

24 Q. I didn't ask you if you heard an assertion 16:39:43
25 from the Saul Zaentz Company. I -- were you aware 16:39:45

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1 that people could play games by downloading them 16:39:50
2 onto their computer and not -- not go in and 16:39:57
3 purchase a physical medium? 16:40:02
4 MS. ESKENAZI: Objection. It's vague and 16:40:04
5 ambiguous. 16:40:06
6 THE WITNESS: I was not aware at that time 16:40:06
7 that it -- it was generally possible simply to 16:40:09
8 download a game without buying the physical disc. 16:40:13
9 BY MR. PETROCELLI: 16:40:13
10 Q. Okay. So, up until September 2010, based 16:40:17
11 on all the work that you did and all the experience 16:40:22
12 that you had and all the people with whom you 16:40:25
13 consulted, it's your testimony that you had no idea 16:40:28
14 that it was possible to access a game by downloading 16:40:33
15 it? 16:40:38
16 MS. ESKENAZI: Objection. It's been asked 16:40:40
17 and answered. 16:40:41
18 THE WITNESS: I didn't have any need to 16:40:42
19 direct my -- 16:40:44
20 BY MR. PETROCELLI: 16:40:44
21 Q. I didn't ask you if you had a need. 16:40:45
22 Can you please repeat my question? 16:40:47
23 MS. ESKENAZI: And you've interrupted the 16:40:48
24 witness' answer. 16:40:49
25 MR. PETROCELLI: She's not answering my 16:40:50

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1 question, so there's no point in having her 16:40:51
2 continue. 16:40:53
3 THE WITNESS: I didn't finish the answer to 16:40:53
4 my question, so -- 16:40:54
5 MR. PETROCELLI: Well, I apologize for 16:40:55
6 interrupting you, then. It didn't sound like you 16:40:56
7 were going to answer it. Why don't we start all 16:40:59
8 over again. 16:41:01
9 Please repeat the question and then you can 16:41:02
10 answer. Then we'll take a break because they're 16:41:04
11 telling me we're running out of tape. 16:41:06
12 (The reporter read the record 16:41:06
13 as follows: 16:41:06
14 "QUESTION: So, up until 16:40:17
15 September 2010, based on all the 16:40:18
16 work that you did and all the 16:40:22
17 experience that you had and all 16:40:24
18 the people with whom you 16:40:26
19 consulted, it's your testimony 16:40:29
20 that you had" -- "it's your 16:40:31
21 testimony that you no idea that it 16:40:31
22 was possible to access a game by 16:40:34
23 downloading it?") 16:40:38
24 MS. ESKENAZI: Objection. Vague and 16:41:26
25 ambiguous. 16:41:32

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1 THE WITNESS: Mr. Petrocelli, your question 16:41:32
2 assumes that I consulted with an awful lot of people 16:41:34
3 on these matters and failed to understand what they 16:41:37
4 were telling me. But that wasn't my testimony. 16:41:41
5 BY MR. PETROCELLI: 16:41:41
6 Q. Can you answer my question now that you've 16:41:44
7 made your objection? 16:41:45
8 A. Can I have the question again, please. 16:41:47
9 Q. Yeah. 16:42:07
10 (The reporter read the record 16:42:07
11 as follows: 16:42:07
12 "QUESTION: So, up until 16:40:17
13 September 2010, based on all the 16:40:18
14 work that you did and all the 16:40:22
15 experience that you had and all 16:40:24
16 the people with whom you 16:40:26
17 consulted, it's your testimony 16:40:29
18 that you had no idea that it was 16:40:31
19 possible to access a game by 16:40:34
20 downloading it?") 16:40:38
21 MS. ESKENAZI: Same objections. It's vague 16:42:08
22 and ambiguous. 16:42:10
23 THE WITNESS: The premise of the -- of the 16:42:10
24 question leads to a -- will lead to a misleading 16:42:14
25 answer, because you're assuming that I had all kinds 16:42:19

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1 of contact with people and that what -- what my 16:42:21
2 knowledge, my state of knowledge about which you 16:42:24
3 asked me is based on that. But the basis is wrong. 16:42:26
4 BY MR. PETROCELLI: 16:42:26
5 Q. That's very good. You're not even a 16:42:31
6 contentious lawyer. You're a transactions lawyer, 16:42:34
7 aren't you? 16:42:37
8 A. I'm trying to give a correct answer to 16:42:38
9 the -- to the point. 16:42:41
10 Q. So, let's take out the business -- we're 16:42:41
11 going to come back to the consulting piece again. 16:42:45
12 But prior to September 2010, it's your 16:42:47
13 testimony that you had no idea whatsoever that it 16:42:50
14 was possible to access a game solely by downloading 16:42:53
15 it? 16:42:57
16 A. I was not aware of that. 16:42:58
17 Q. Did you ever make any inquiries of anybody, 16:43:00
18 prior to September 2010, whether that was possible? 16:43:03
19 A. No, because I had no reason to do so. 16:43:07
20 MR. PETROCELLI: Move to strike everything 16:43:10
21 after the word "no." We'll talk about your reason 16:43:11
22 to do so after they change the tape. 16:43:14
23 THE VIDEOGRAPHER: This is the end of media 16:43:16
24 number 4. Off the record at 4:44 p.m. 16:43:18
25 (Brief recess.) 16:43:24

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1 THE VIDEOGRAPHER: We are back on the 16:52:24
2 record at 5:06 p.m. This is the beginning of media 17:05:50
3 number 5. Counsel may proceed. 17:05:53
4 BY MR. PETROCELLI: 17:05:53
5 Q. Your resume, Exhibit 1, states that you're 17:05:56
6 managing the business of a well-known literary 17:06:03
7 estate across its worldwide operations. 17:06:06
8 That refers to the Tolkien Estate? 17:06:07
9 A. I think Mr. Ulin asked that question and I 17:06:10
10 confirmed that it does. 17:06:13
11 Q. It does. Okay. 17:06:14
12 And are you the person on behalf of the 17:06:15
13 Tolkien Estate responsible for monitoring uses under 17:06:19
14 the '69 agreements and whether, in particular, 17:06:27
15 Zaentz's uses are permitted or not permitted? 17:06:29
16 MS. ESKENAZI: Objection. Vague and 17:06:35
17 ambiguous. 17:06:40
18 THE WITNESS: I'm responsible for the 17:06:40
19 second -- in relation to the second limb of what you 17:06:41
20 mentioned, which -- which I'm going to have to ask 17:06:45
21 you to say it again. 17:06:49
22 BY MR. PETROCELLI: 17:06:49
23 Q. The uses by Zaentz? 17:06:50
24 A. There was a bit of your question which says 17:06:51
25 "you're the person doing monitoring and you're the 17:06:54

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1 person doing"? 17:06:57

2 Q. Are you the person most responsible for 17:06:57

3 monitoring the merchandising uses by Zaentz? 17:07:01

4 MS. ESKENAZI: Objection. Vague and 17:07:10

5 ambiguous. 17:07:11

6 THE WITNESS: It's my job to deal with the 17:07:11

7 lic- -- to oversee the licensing that is undertaken 17:07:18

8 by Zaentz. 17:07:23

9 BY MR. PETROCELLI: 17:07:23

10 Q. Okay. Is there anybody more involved and 17:07:24

11 who has been more involved in that endeavor over the 17:07:28

12 years than yourself? 17:07:31

13 A. No. 17:07:32

14 Q. Okay. 17:07:32

15 A. Not as far as I'm aware. 17:07:34

16 Q. Have you felt that you have been fully 17:07:35

17 capable of performing that task on behalf of your 17:07:38

18 clients? 17:07:42

19 MS. ESKENAZI: Objection. Vague and 17:07:43

20 ambiguous. 17:07:45

21 THE WITNESS: I don't really understand the 17:07:51

22 question. 17:08:01

23 BY MR. PETROCELLI: 17:08:01

24 Q. Well, at any point in time did you feel 17:08:01

25 that you were not competent to perform this task for 17:08:03

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1	this -- for -- for your client?	17:08:06
2	A. No.	17:08:08
3	Q. Okay. You -- you've identified yourself	17:08:10
4	and the -- in your resume, Exhibit 1, as having	17:08:13
5	extensive experience in copyright and trademark law.	17:08:16
6	And that's correct, is it not?	17:08:19
7	A. Do you mind if I look for my resume because	17:08:21
8	you're asking me questions about it?	17:08:23
9	Q. You may. First exhibit. There you go.	17:08:25
10	Right there.	17:08:33
11	It's true that you have and had had over	17:08:35
12	the years extensive experience in copyright and	17:08:37
13	trademark law, correct?	17:08:40
14	A. Yes.	17:08:42
15	Q. You're a member of the Copyright Committee;	17:08:47
16	is that right?	17:08:52
17	MS. ESKENAZI: Objection. Vague and	17:08:52
18	ambiguous.	17:08:52
19	BY MR. PETROCELLI:	17:08:52
20	Q. Copyright Committee of the Association of	17:08:55
21	Learned Professional and Society Publishers; is that	17:08:56
22	right?	17:08:56
23	A. I -- I was a member of the Copyright	17:09:01
24	Committee of the Association of Learned Professional	17:09:03
25	Society Publishers, which we abbreviate to ALSP.	17:09:06

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1 Q. Are you still? 17:09:10

2 A. No, I -- I ceased to be at the -- at -- at 17:09:10

3 some point this year. 17:09:13

4 Q. This year? 17:09:17

5 A. Yes. 17:09:17

6 Q. How long were you a member? 17:09:18

7 A. Quite a number of years. 17:09:20

8 Q. And you're also a member of the Museums 17:09:22

9 Copyright Group; is that right? 17:09:22

10 A. Yes. 17:09:22

11 Q. Okay. And when you were receiving 17:09:29

12 documents of the sort that we saw today, documents 17:09:35

13 from Zaentz, for example, and documents from others, 17:09:40

14 did you feel competent to read and understand the 17:09:42

15 documents that were sent to you in the course of 17:09:47

16 your work? 17:09:49

17 MS. ESKENAZI: Objection. Vague and 17:09:52

18 ambiguous. 17:09:53

19 THE WITNESS: Yes, I did. 17:09:59

20 BY MR. PETROCELLI: 17:09:59

21 Q. Have you -- did you ever feel the need at 17:10:00

22 any point in time to reach out and seek special 17:10:02

23 training or education, for example, on computer 17:10:04

24 technology or Internet technology or the types of 17:10:07

25 uses that were -- were being made now with new 17:10:11

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1 technologies? 17:10:17

2 A. No. 17:10:17

3 Q. Okay. Did you ever consult with anybody to 17:10:19

4 give you special advice on those matters? 17:10:22

5 MS. ESKENAZI: Objection. Asked and 17:10:25

6 answered. 17:10:26

7 You can answer again. 17:10:27

8 THE WITNESS: No. 17:10:27

9 BY MR. PETROCELLI: 17:10:27

10 Q. Did you ever reach out to anybody to ask 17:10:33

11 for help or assistance in understanding any of those 17:10:35

12 matters? 17:10:37

13 A. I may have -- 17:10:37

14 MS. ESKENAZI: Objection. Vague and 17:10:40

15 ambiguous. 17:10:41

16 THE WITNESS: I may have discussed 17:10:41

17 developments in technology with other people. 17:10:44

18 BY MR. PETROCELLI: 17:10:44

19 Q. Okay. Anybody come to mind that was of 17:10:47

20 particular -- of particular assistance to you in 17:10:51

21 that regard in the matters of technology? 17:10:54

22 A. I don't recall. 17:10:55

23 Q. Okay. Is there any member of the Tolkien 17:11:08

24 family with whom you regularly consulted on whether 17:11:09

25 new technological uses were covered by the Zaentz 17:11:13

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1 agreement? 17:11:17

2 MS. ESKENAZI: Objection to the extent that 17:11:19

3 calls for attorney-client privileged information. 17:11:20

4 THE WITNESS: I can't answer that question 17:11:30

5 without giving privileged information. 17:11:31

6 BY MR. PETROCELLI: 17:11:31

7 Q. Why can't you? I'm just asking you 17:11:34

8 whether -- what was my question? I think I asked 17:11:37

9 for -- yeah, is there any of your client group, is 17:11:39

10 there any one of them with whom you regularly 17:11:43

11 consulted on that subject? 17:11:46

12 And I'll stipulate that answering doesn't 17:11:50

13 waive the privilege. 17:11:52

14 MS. ESKENAZI: Okay. 17:11:53

15 THE WITNESS: No. 17:11:54

16 BY MR. PETROCELLI: 17:11:54

17 Q. Of the -- of the -- of all the members of 17:11:55

18 the Tolkien family client group, is there any one of 17:11:58

19 them in particular you regard as computer savvy? 17:12:01

20 MS. ESKENAZI: Objection. Assumes facts 17:12:10

21 not in evidence. Vague and ambiguous. 17:12:10

22 THE WITNESS: I don't know what you mean 17:12:11

23 by "computer savvy." 17:12:13

24 BY MR. PETROCELLI: 17:12:13

25 Q. Very, very conversant with computers and 17:12:14

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1 computer technology. 17:12:21

2 MS. ESKENAZI: Same objections. 17:12:22

3 THE WITNESS: Could I have the beginning of 17:12:22

4 the question again, please? 17:12:24

5 BY MR. PETROCELLI: 17:12:24

6 Q. Yeah. Of the -- are you aware whether any 17:12:25

7 members of the Tolkien family who were part of your 17:12:28

8 client group are especially conversant with 17:12:30

9 computers or computer technology? 17:12:32

10 MS. ESKENAZI: Same objections. 17:12:33

11 THE WITNESS: I'm not aware that any is. 17:12:34

12 BY MR. PETROCELLI: 17:12:34

13 Q. Okay. Do you know whether any of them have 17:12:39

14 ever played any -- any computer games licensed by 17:12:40

15 Zaentz? 17:12:45

16 A. I -- I don't know. 17:12:45

17 Q. Have you? 17:12:49

18 A. No. Well, I don't believe I have, no. 17:12:52

19 Q. You don't -- you're not sure? 17:12:55

20 A. Well, I conducted that review of games in 17:12:59

21 the '90s. I probably looked at them then. 17:13:03

22 Q. At computer games? 17:13:07

23 A. At the ones that were available then for 17:13:07

24 the purposes of that review. 17:13:11

25 Q. Prior to the break, you testified that it 17:13:12

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1 wasn't until September 2010 -- that prior to 17:13:19
2 September 2010 you had no idea that the games could 17:13:22
3 be accessed by downloading them onto the computer? 17:13:27
4 A. By downloading them only without -- without 17:13:29
5 buying a computer -- a -- a computer game on disc or 17:13:34
6 other physical media. 17:13:37
7 Q. Well, did you discuss your testimony with 17:13:39
8 your lawyer over the break? 17:13:41
9 MS. ESKENAZI: Object. Attorney-client 17:13:43
10 privilege. Instruct not to answer. 17:13:46
11 BY MR. PETROCELLI: 17:13:47
12 Q. Do you now want -- do you now want to 17:13:48
13 change your prior answer? 17:13:49
14 MS. ESKENAZI: Misstates the testimony. 17:13:50
15 MR. PETROCELLI: Could you go back and show 17:13:53
16 me the answer right before the break? 17:13:54
17 Q. I'm going to -- I'm going to confront you 17:13:55
18 with it again and then you can tell me whether 17:13:57
19 you're going to change your answer or not. Okay? 17:13:59
20 MS. ESKENAZI: You can spend your time 17:14:02
21 however you'd like, Mr. Petrocelli, but when you ask 17:14:04
22 for more time from the judge, we're going to point 17:14:06
23 out that you're just going over irrelevant 17:14:08
24 information. 17:14:11
25 MR. PETROCELLI: I'm -- I'm sure you will. 17:14:11

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1 THE REPORTER: The answer right before the 17:14:11
2 break, you said? 17:14:11
3 MR. PETROCELLI: Yes. 17:14:51
4 Can we go back to the transcript. Molly,
5 you want to find it for me?
6 THE REPORTER: I got it.
7 (The reporter read the record
8 as follows:
9 "QUESTION: Did you ever make 16:43:01
10 any inquiries of anybody prior to 16:43:01
11 September 2010 whether that was 16:43:04
12 possible? 16:43:07
13 "ANSWER: No, because I had 16:43:08
14 no reason to do so.") 16:43:08
15 MR. PETROCELLI: Prior question. 16:43:08
16 (The reporter read the record 16:43:08
17 as follows: 16:43:08
18 "QUESTION: We're going to come 16:42:44
19 back to the consulting piece again. 16:42:46
20 But prior to September 2010, it's your 16:42:47
21 testimony that you had no idea 16:42:50
22 whatsoever that it was possible to 16:42:53
23 access a game solely by downloading it? 16:42:54
24 "ANSWER: I was not aware of that.") 16:42:58
25 BY MR. PETROCELLI: 17:14:51

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1 Q. You stick by that answer? 17:14:51

2 A. You said solely by downloading it, which 17:14:52

3 I -- which I understood to mean downloadable-only, 17:14:56

4 i.e., a game without the purchase of a physical 17:14:58

5 object. 17:15:01

6 Q. Are you changing your answer or are you 17:15:02

7 standing -- 17:15:05

8 A. I don't -- 17:15:05

9 Q. -- by your answer? 17:15:05

10 A. I -- I -- 17:15:06

11 MS. ESKENAZI: Objection. It's 17:15:06

12 argumentative. 17:15:07

13 BY MR. PETROCELLI: 17:15:07

14 Q. You heard the -- you heard the question and 17:15:08

15 you heard your answer. Do you want -- are you 17:15:09

16 telling me your answer is not accurate? 17:15:12

17 MS. ESKENAZI: Counsel, move on. 17:15:15

18 BY MR. PETROCELLI: 17:15:15

19 Q. Please answer my question. 17:15:18

20 A. I've clarif- -- I've clarified my answer. 17:15:18

21 Q. Did you feel your answer was incorrect? 17:15:20

22 A. No, but I think you misunderstood it. 17:15:22

23 Q. Okay. So you have nothing to -- do you 17:15:24

24 feel when you gave your answer that it was truthful 17:15:26

25 and you still feel right now that it was truthful or 17:15:28

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1 do you feel you made a mistake and you want to 17:15:31
2 correct it? 17:15:33
3 MS. ESKENAZI: Objection. Asked and 17:15:33
4 answered. And you're battering the witness. You're 17:15:35
5 arguing with the witness. I'm not going to allow 17:15:38
6 you to do that. She's given her answer. Move on, 17:15:41
7 Mr. Petrocelli. 17:15:43
8 BY MR. PETROCELLI: 17:15:43
9 Q. Can you please answer my question now? 17:15:44
10 MS. ESKENAZI: She's instructed not to 17:15:45
11 answer. Move on. 17:15:47
12 BY MR. PETROCELLI: 17:15:47
13 Q. Prior to 2010, did you have any clue 17:15:49
14 whatsoever -- prior to September 2010, did you have 17:15:52
15 any clue whatsoever that it was possible to download 17:15:57
16 a game from the Internet onto the computer and 17:16:03
17 access it that way? Yes or no? 17:16:09
18 MS. ESKENAZI: Objection. It's been asked 17:16:11
19 and answered. It's vague and ambiguous. It's 17:16:14
20 compound. 17:16:17
21 And you don't need to answer "yes" or "no." 17:16:18
22 You just need to answer truthfully. 17:16:20
23 THE WITNESS: I'm restating my testimony. 17:16:22
24 I said solely by means of download. And by that 17:16:25
25 phrase, I meant the same as downloadable-only. 17:16:29

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1 BY MR. PETROCELLI: 17:16:29

2 Q. So you were not aware, then, prior to 2010 17:16:33

3 that a person could obtain access to a game solely 17:16:36

4 by downloading it onto a computer, correct? 17:16:41

5 A. Correct. That there had to be -- there had 17:16:44

6 to be a pur- -- a purchase of a physical object. 17:16:47

7 MR. PETROCELLI: I move to strike 17:16:53

8 everything after the word "yes." 17:16:54

9 THE WITNESS: Well, I've added that simply 17:16:58

10 to clarify my answer and make it accurate. 17:16:59

11 BY MR. PETROCELLI: 17:17:01

12 Q. Now, did you understand prior to September 17:17:01

13 2010, did you have any knowledge or understanding 17:17:07

14 that it was technologically possible to download a 17:17:09

15 game from some site on the Internet onto a computer? 17:17:15

16 A. I didn't apply my mind to what the 17:17:20

17 possibilities of technology were. 17:17:23

18 Q. That was not my question. 17:17:24

19 Did you know prior to September 2010 that 17:17:25

20 it was possible to download a game from a Web site 17:17:30

21 on the Internet onto a computer? 17:17:33

22 MS. ESKENAZI: Objection. It's been asked 17:17:35

23 and answered. 17:17:37

24 You can answer yet again. 17:17:38

25 I'm also going to say it's vague and 17:17:39

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1	ambiguous.	17:17:39
2	You can answer again.	17:17:46
3	THE WITNESS: Would you like to ask the	17:17:47
4	question again, please?	17:17:48
5	MR. PETROCELLI: Please repeat it.	17:17:59
6	(The reporter read the record	17:17:59
7	as follows:	17:17:59
8	"QUESTION: Did you know	17:17:25
9	prior to September 2010 that it	17:17:26
10	was possible to download a game	17:17:30
11	from a Web site on the Internet	17:17:33
12	onto a computer?")	17:17:34
13	MS. ESKENAZI: Same objections.	17:18:00
14	THE WITNESS: I don't believe I knew it was	17:18:10
15	possible to do that.	17:18:13
16	BY MR. PETROCELLI:	17:18:13
17	Q. Okay. So prior to September 2010, you had	17:18:14
18	never heard of downloading, that phrase or that	17:18:16
19	word?	17:18:22
20	MS. ESKENAZI: Objection. Argumentative	17:18:23
21	and asked and answered. Vague and ambiguous.	17:18:26
22	THE WITNESS: It's already part of the	17:18:27
23	testimony in this case that I've seen the word	17:18:29
24	"download."	17:18:31
25	BY MR. PETROCELLI:	17:18:31

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1 Q. Okay. So when you saw the word 17:18:33
2 "download" -- so I take it your answer is, you were 17:18:36
3 familiar with the word "download" prior to September 17:18:37
4 2010; is that right? 17:18:41
5 A. I have seen the word "download." 17:18:41
6 Q. And had you ever heard or seen anything 17:18:43
7 about downloading a game prior to September 2010, 17:18:46
8 some kind of computer game or video game? 17:18:52
9 A. I -- I don't -- that's such a broad 17:18:54
10 question. How can I possibly answer it? 17:18:56
11 Q. Truthfully. 17:18:59
12 A. I don't -- I don't -- I don't know. 17:18:59
13 Q. As you sit here right now, you don't know 17:19:01
14 whether prior to 2010 you'd ever heard of the idea 17:19:05
15 of downloading a computer game or a video game. 17:19:07
16 Is that your testimony? 17:19:11
17 MS. ESKENAZI: Objection. It's vague -- 17:19:11
18 THE WITNESS: Without. 17:19:11
19 MS. ESKENAZI: -- and ambiguous. 17:19:12
20 THE WITNESS: Which I want to clarify, I 17:19:12
21 wasn't aware that it was possible to do that without 17:19:16
22 first buying a game on physical media. 17:19:18
23 BY MR. PETROCELLI: 17:19:18
24 Q. I'm trying to separate these two things. 17:19:23
25 A. I understand that. 17:19:25

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1 Q. Were you -- 17:19:25

2 A. But I'm trying to explain my knowledge. 17:19:26

3 Q. Well, we'll -- we'll -- let me -- let me 17:19:28

4 examine you on that. 17:19:32

5 You keep saying you had to buy something in 17:19:33

6 the store because you think the license agreement 17:19:39

7 supports that view, correct? 17:19:43

8 A. That's correct. 17:19:45

9 Q. Okay. 17:19:45

10 MS. ESKENAZI: Objection. 17:19:47

11 BY MR. PETROCELLI: 17:19:47

12 Q. I'm not interested right now in finding out 17:19:47

13 what your legal arguments are about the license 17:19:50

14 agreement. I'm trying to find out factually what 17:19:54

15 you did and what you knew. Okay? 17:19:57

16 So with that in mind, did you know, putting 17:20:00

17 aside the license agreement for a moment, the 17:20:06

18 merchandising agreement with -- with Zaentz, putting 17:20:08

19 that aside, did you know prior to 2010 that people 17:20:11

20 could go on to a computer, get on to the Internet, 17:20:15

21 find some game, download it, and then play it 17:20:20

22 without going into a store to buy anything, the game 17:20:25

23 on a physical media? Did -- were you aware that 17:20:28

24 that was possible? 17:20:31

25 MS. ESKENAZI: Objection. It's vague and 17:20:32

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1 ambiguous. It's been asked and answered. And it's 17:20:35
2 argumentative. 17:20:37
3 You can answer yet again for the 15th time 17:20:39
4 today. 17:20:42
5 THE WITNESS: May I have the question 17:20:48
6 again, please? 17:20:49
7 (The reporter read the record 17:20:49
8 as follows: 17:20:49
9 "QUESTION: I'm not 17:19:47
10 interested right now in finding 17:19:48
11 out what your legal arguments are 17:19:50
12 about the license agreement. I'm 17:19:53
13 trying to find out factually what 17:19:55
14 you did and what you knew. Okay? 17:19:57
15 So with that in mind, did you 17:20:00
16 know, putting aside the license 17:20:05
17 agreement for a moment, the 17:20:06
18 merchandising agreement with 17:20:08
19 Zaentz, putting that aside, did 17:20:10
20 you know prior to 2010 that people 17:20:12
21 could go on to a computer, get on 17:20:15
22 to the Internet, find some game, 17:20:19
23 download it, and then play it 17:20:22
24 without going into a store to buy 17:20:25
25 anything, the game on a physical 17:20:27

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1 media? Were you aware that that 17:20:29
2 was possible?") 17:20:31
3 MS. ESKENAZI: I'm going to add another 17:21:16
4 objection which is compound. 17:21:18
5 THE WITNESS: I'm not sure what the state 17:21:20
6 of my knowledge was at that point. 17:21:21
7 BY MR. PETROCELLI: 17:21:21
8 Q. At what point? 17:21:23
9 A. The point you referred to in your question. 17:21:25
10 Q. When did you -- do you know -- do you know 17:21:26
11 now, as of today sitting here testifying, that it's 17:21:32
12 possible for people to go and download games onto a 17:21:37
13 computer and play them without walking into a store 17:21:40
14 to buy something? 17:21:42
15 A. I believe it is now becoming possible. 17:21:44
16 Q. It's possible? Is that what you just said? 17:21:45
17 A. It is becoming possible. 17:21:48
18 Q. Okay. When is the first time you heard 17:21:49
19 that that was possible? 17:21:50
20 MS. ESKENAZI: Objection. It's been asked 17:21:53
21 and answered. 17:21:54
22 You can answer it again. 17:21:55
23 THE WITNESS: It came to my attention in 17:21:56
24 the discussions which preceded this dispute. 17:21:57
25 BY MR. PETROCELLI: 17:21:57

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1 Q. You're talking about the -- the -- in or 17:22:01
2 about September 2010, plaintiffs for the first time 17:22:06
3 learned of an online slot game known as Lord of the 17:22:09
4 Rings, which prominently features and uses 17:22:13
5 characters, et cetera, et cetera, as alleged in the 17:22:16
6 lawsuit? Is that the event you're talking about? 17:22:18
7 MS. ESKENAZI: Objection. It's vague and 17:22:20
8 ambiguous. 17:22:21
9 THE WITNESS: That's an element of the -- 17:22:21
10 BY MR. PETROCELLI: 17:22:21
11 Q. Can you give me a date when you first 17:22:26
12 learned that somebody, anybody, could go and play 17:22:28
13 games on the computer by downloading them without 17:22:31
14 going into a store to buy some -- some physical 17:22:34
15 product? 17:22:38
16 MS. ESKENAZI: Objection. It's been asked 17:22:38
17 and answered. 17:22:39
18 You can answer yet again. 17:22:40
19 THE WITNESS: That specific knowledge came 17:22:41
20 to me in the -- in the discussions leading up to 17:22:43
21 this lawsuit. 17:22:49
22 BY MR. PETROCELLI: 17:22:49
23 Q. So in or about September 2010? 17:22:51
24 A. Well, there were a number of assertions 17:22:55
25 made following on from that. That -- in 17:22:57

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1 September 2010, we became aware of gambling online. 17:23:00
2 When we asked what was going on, and how that came 17:23:07
3 to be happening, having first established that it 17:23:11
4 wasn't actually an infringement, but it was -- this 17:23:15
5 was being done under the aegis of the Saul Zaentz 17:23:18
6 Company, we -- we had further communications with 17:23:21
7 the Saul Zaentz Company and they -- it was in the 17:23:25
8 course of that that they asserted rights to 17:23:27
9 downloadable-only games. 17:23:32

10 Q. So prior to 2010, you had no idea, putting 17:23:34
11 aside the Saul Zaentz Company and putting aside what 17:23:38
12 the contract means, you had no idea that anybody 17:23:41
13 could go onto a computer and download a game without 17:23:44
14 buying it in the store? 17:23:47

15 MS. ESKENAZI: Objection. It's been asked 17:23:48
16 and answered. This is the last time I'm going to 17:23:50
17 allow you to ask that question. I'm going to 17:23:51
18 instruct not to answer the next time. 17:23:54

19 You can ans- -- answer yet again. 17:23:56

20 MR. PETROCELLI: I can only ask the 17:23:57
21 questions, Bonnie. 17:23:58

22 MS. ESKENAZI: Over and over again. 17:23:59

23 THE WITNESS: Mr. Petrocelli, you're asking 17:24:01
24 the same question again and again. 17:24:02

25 MR. GLICK: Respectfully, he's not. 17:24:04

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1 MS. ESKENAZI: He is. 17:24:05

2 MR. PETROCELLI: Look, I -- 17:24:05

3 MR. GLICK: And if you instruct, we're 17:24:06

4 going to all be back here from England. 17:24:08

5 MS. ESKENAZI: I'm sure. 17:24:10

6 MR. PETROCELLI: We're going to be back -- 17:24:10

7 MR. GLICK: You'd like to really -- 17:24:10

8 MR. PETROCELLI: -- here anyway. 17:24:11

9 Q. But can -- can you please try to answer -- 17:24:12

10 I'm trying to get -- I'm trying to establish a 17:24:12

11 timing. I just want a time frame when you -- when 17:24:14

12 you first learned that -- you said in connection 17:24:18

13 with the events that lead to this lawsuit, and I'm 17:24:21

14 trying to get a year. Can you give me a year? 17:24:24

15 A. It was sometime after 2010. 17:24:27

16 Q. Okay. 17:24:28

17 A. Or in 2010 or sometime after that. 17:24:31

18 Q. Close enough. Okay. 17:24:32

19 And how did you learn that, by the way, in 17:24:40

20 2010? Who -- who told you for the first time that 17:24:41

21 somebody could actually go on a computer and play a 17:24:46

22 game by downloading it without running off to buy 17:24:49

23 something in the store first? 17:24:52

24 A. My knowledge didn't come about in the way 17:24:53

25 you describe. My knowledge came about from 17:24:56

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1 communications from the Saul Zaentz Company and 17:25:00
2 their lawyers indicating that they claimed this 17:25:03
3 sort of right, they claimed the right to be able to 17:25:07
4 license games. 17:25:09
5 Q. Well, I'm not talking about the rights now. 17:25:10
6 I'm simply talking about the fact that this could be 17:25:12
7 done, that people could play -- 17:25:15
8 A. Yes, I und- -- 17:25:15
9 Q. -- games in this manner, okay? 17:25:16
10 A. I understand the question, Mr. Petrocelli, 17:25:20
11 but I'm telling you the context -- 17:25:22
12 Q. Okay. 17:25:22
13 A. -- in which I learned it. 17:25:23
14 Q. Let me -- let me follow up, then. When you 17:25:24
15 learned -- 17:25:26
16 MS. ESKENAZI: Mr. Petrocelli, can you 17:25:26
17 allow the witness to finish her answer. 17:25:27
18 BY MR. PETROCELLI: 17:25:27
19 Q. Well, I'm not -- I'm not asking about the 17:25:29
20 context. I asked who told you. 17:25:30
21 Can you identify the person who first 17:25:32
22 informed you? 17:25:34
23 MS. ESKENAZI: Objection. Assumes facts 17:25:35
24 not in evidence. 17:25:37
25 THE WITNESS: The information -- 17:25:38

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1 BY MR. PETROCELLI: 17:25:40

2 Q. Person. Name. 17:25:41

3 MS. ESKENAZI: Objection. Assumes facts 17:25:44

4 not in evidence. 17:25:45

5 THE WITNESS: You know, I didn't get -- I 17:25:45

6 didn't get more than -- more than two words of my 17:25:46

7 answer -- 17:25:48

8 BY MR. PETROCELLI: 17:25:48

9 Q. I know because you -- 17:25:48

10 A. -- there before you -- but you didn't know 17:25:48

11 what I was going to say. 17:25:50

12 Q. Well, I've been doing this long enough to 17:25:52

13 have a good guess. 17:25:53

14 A. That's not -- that's not fair, 17:25:54

15 Mr. Petrocelli. 17:25:55

16 Q. Let me -- let me -- 17:25:55

17 A. You haven't been doing it that long with 17:25:56

18 me. 17:26:00

19 Q. So let me -- let me just learn from you. 17:26:00

20 Can you tell me who -- who first told you? 17:26:02

21 A. I could have if you'd let me answer your 17:26:03

22 question. 17:26:05

23 Q. Don't give me -- 17:26:06

24 A. But now -- 17:26:06

25 Q. -- about the information you learned -- 17:26:06

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1 A. But now -- 17:26:08

2 Q. -- and the context -- 17:26:08

3 A. Now -- 17:26:08

4 Q. Just give me the name. 17:26:09

5 A. Now we are going to have to have the 17:26:10

6 question again, wasting more time. 17:26:13

7 Q. Who first told you that it was possible for 17:26:15

8 people in today's day and age to go onto a computer 17:26:17

9 and download a game and play it without first 17:26:22

10 buying it -- 17:26:24

11 A. That information -- 17:26:24

12 Q. -- in the store? 17:26:25

13 A. -- emerged from communications made with me 17:26:26

14 by the Saul Zaentz Company and their lawyers. 17:26:31

15 Q. Who at Saul Zaentz? 17:26:33

16 A. My specific recollection is that it was Tom 17:26:34

17 Magnani of Arnold & Porter as lawyers for the Saul 17:26:40

18 Zaentz Company by means of his assertion that -- 17:26:46

19 that -- Zaent- -- Zaentz owned all of these rights, 17:26:49

20 that I became aware that he was -- that this form of 17:26:51

21 technology was -- was either -- either existed or 17:26:55

22 was about to exist. 17:27:00

23 Q. Were you shocked when you learned that? 17:27:00

24 And again, not about -- not about the rights he was 17:27:04

25 claiming, but about the technological fact that this 17:27:07

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1	could be done?	17:27:11
2	A. Well, the two things are different.	17:27:12
3	Q. Well, I'm asking what was your reaction to	17:27:14
4	learning that folks could download games at home	17:27:16
5	without going off to buy it in the store first?	17:27:21
6	MS. ESKENAZI: Objection. Vague and	17:27:24
7	ambiguous.	17:27:24
8	BY MR. PETROCELLI:	17:27:24
9	Q. What was your reaction when you learned	17:27:26
10	that from -- from Tom?	17:27:28
11	A. My reaction was not to the --	17:27:28
12	Q. So you had no reaction to that?	17:27:32
13	MS. ESKENAZI: Objection. Assumes facts.	17:27:34
14	THE WITNESS: I didn't get to finish my	17:27:36
15	answer. Please.	17:27:37
16	BY MR. PETROCELLI:	17:27:38
17	Q. I don't want to hear the reaction about the	17:27:38
18	rights issue. I want to hear -- I want to hear the	17:27:40
19	reaction about the computer use.	17:27:41
20	MS. ESKENAZI: Okay. Mr. Petrocelli, you	17:27:44
21	get to ask the questions, and the witness gets to	17:27:45
22	answer the questions. I would appreciate it if you	17:27:47
23	would --	17:27:49
24	MR. PETROCELLI: But she's not answering my	17:27:49
25	question.	17:27:51

1 MS. ESKENAZI: She is answering the 17:27:51
2 questions but she's not answering the way you want, 17:27:52
3 which is why you keep -- which is why you keep -- 17:27:55
4 MR. PETROCELLI: Come on now, you know that 17:27:56
5 in court she would not be permitted to answer the 17:27:57
6 questions in this way and there would be a judge who 17:27:59
7 would be sustaining all my motions to strike. But 17:28:03
8 let's go forward. 17:28:08
9 MS. ESKENAZI: And you know very well that 17:28:08
10 a judge would not allow you to keep trying to get -- 17:28:10
11 ask the same questions over and over and over again. 17:28:12
12 Let the witness finish her answer. 17:28:14
13 BY MR. PETROCELLI: 17:28:14
14 Q. Please try to be responsive. 17:28:17
15 MS. ESKENAZI: She is being responsive. 17:28:18
16 You just don't like what she's saying and so you're 17:28:19
17 trying to -- trying to browbeat this witness into 17:28:22
18 not giving you her full, complete, honest testimony. 17:28:25
19 So let her finish her answer. 17:28:27
20 THE WITNESS: Mr. Petrocelli, at the 17:28:30
21 beginning of today I undertook to give accurate 17:28:32
22 testimony. I have to do that by making 17:28:36
23 clarifications and if I can't answer your question 17:28:39
24 because it wouldn't be accurate to answer in your 17:28:43
25 way, I feel I have to give context. 17:28:48

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1 BY MR. PETROCELLI: 17:28:48

2 Q. I'll ask you another question, okay? 17:28:51

3 A. Are we going back to the other one or? 17:28:52

4 Q. No, I'll ask you a different one. 17:28:53

5 Have you -- you -- you -- you've given this 17:28:55

6 testimony that -- with respect to computer games, 17:29:13

7 including online games, that for Zaentz to have the 17:29:19

8 rights, the person first has to go into the store 17:29:24

9 and buy the device on which the contents of the game 17:29:28

10 appear, correct? 17:29:32

11 A. My analysis of -- 17:29:34

12 MS. ESKENAZI: Objection. 17:29:35

13 BY MR. PETROCELLI: 17:29:35

14 Q. Is that correct? 17:29:36

15 MS. ESKENAZI: Objection. Misstates the 17:29:36

16 testimony. 17:29:37

17 THE WITNESS: What I have said is that 17:29:40

18 there has to be an article of tangible personal 17:29:41

19 property. 17:29:44

20 BY MR. PETROCELLI: 17:29:44

21 Q. That wasn't my question to you. Okay? 17:29:46

22 You're just repeating the words that are in the 17:29:48

23 contract. Okay? 17:29:51

24 A. They're very important words. 17:29:51

25 Q. Well, we're going to talk about that but I 17:29:53

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1 want to get there first and I get to do it my way. 17:29:56

2 Okay? 17:29:59

3 So my question is, when your -- you've -- 17:29:59

4 you've testified that you understood that for Zaentz 17:30:07

5 to have rights for computer games or online games, 17:30:12

6 games delivered by various computer platforms, 17:30:17

7 including via the Internet, that there had to -- a 17:30:22

8 person had to be able to walk into a store or -- or 17:30:26

9 even go on Amazon or something, but buy a physical 17:30:32

10 object that has the contents of the game on it, 17:30:37

11 correct? 17:30:37

12 A. I have testified that computer games had to 17:30:41

13 be on physical media, purchased on physical media in 17:30:44

14 order to fall within the ground. 17:30:50

15 Q. So the game itself had to be on a -- on a 17:30:51

16 device independent of the computer on which you play 17:30:55

17 the device, correct? 17:30:58

18 A. The game had to be on a medium, a physical 17:31:00

19 medium. 17:31:04

20 Q. Okay. Do you mean a medium that you buy in 17:31:04

21 a store or you order online and have delivered to 17:31:07

22 your house? 17:31:10

23 MS. ESKENAZI: Objection. Vague and 17:31:12

24 ambiguous. 17:31:15

25 THE WITNESS: I mean a physical item that 17:31:15

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1 you had to purchase, the mode of purchasing a 17:31:18
2 physical item. It could take place in a number of 17:31:21
3 forms. 17:31:26
4 BY MR. PETROCELLI: 17:31:26
5 Q. What are the types of physical media that 17:31:27
6 you understood contained contents of games? Discs? 17:31:29
7 A. Discs. 17:31:34
8 Q. What else? 17:31:34
9 A. Cartridges. 17:31:35
10 Q. Cartridges. Anything else? 17:31:36
11 A. I'm not aware of any other specifics. 17:31:40
12 Q. Now, was there -- so if a -- so your 17:31:41
13 testimony has been that Zaentz did not have the 17:31:49
14 right to merchandise a game that could only be 17:31:52
15 purchased by getting onto the computer and 17:31:56
16 downloading it onto -- onto the hard drive of the 17:31:58
17 computer? 17:32:01
18 MS. ESKENAZI: Objection. Asked and 17:32:02
19 answered. Vague and ambiguous. 17:32:03
20 BY MR. PETROCELLI: 17:32:03
21 Q. Correct? 17:32:05
22 A. If there wasn't an article of tangible 17:32:06
23 personal property, a physical medium being 17:32:08
24 purchased, that's correct. 17:32:10
25 Q. In my example, is there -- is there a 17:32:11

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1 tangible -- article of tangible property in my 17:32:15
2 example of just downloading a game onto your hard 17:32:20
3 drive? 17:32:22
4 MS. ESKENAZI: Objection. Vague and 17:32:28
5 ambiguous. 17:32:28
6 THE WITNESS: I don't really understand the 17:32:29
7 question. 17:32:30
8 BY MR. PETROCELLI: 17:32:30
9 Q. You said there had to be an article of 17:32:31
10 tangible personal property? 17:32:33
11 A. Uh-huh. 17:32:34
12 Q. And -- and you're saying that an article of 17:32:35
13 tangible personal property only exists when the game 17:32:37
14 is on a disc or a cartridge and it doesn't exist if 17:32:40
15 you merely access the game by downloading it from 17:32:44
16 the Internet, correct? 17:32:47
17 A. It depends. I mean, that's a hypothetical 17:32:50
18 question. I don't know what kind of game you're 17:32:52
19 talking about. 17:32:54
20 Q. Well, give me an exam- -- 17:32:56
21 A. I don't know how it -- 17:32:58
22 Q. Give me an example of a game that would 17:32:58
23 constitute an article of tangible personal property 17:33:01
24 that you could -- a consumer could obtain by 17:33:04
25 downloading it from the computer -- 17:33:10

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1 MS. ESKENAZI: Objection. 17:33:10

2 BY MR. PETROCELLI: 17:33:10

3 Q. -- onto a computer? 17:33:11

4 MS. ESKENAZI: Objection. Vague and 17:33:13

5 ambiguous. 17:33:14

6 THE WITNESS: I can -- I can only apply the 17:33:14

7 principles in that agreement. So if somebody from 17:33:15

8 the Internet, from the ether, acquired a computer 17:33:20

9 game without that computer game taking the form of 17:33:23

10 an article of tangible personal property, then it -- 17:33:28

11 it falls outside the Zaentz grant. 17:33:32

12 BY MR. PETROCELLI: 17:33:32

13 Q. So -- so you don't rule out, then, if some 17:33:36

14 computer forensic expert came up to you and said, 17:33:39

15 "By the way, when folks download computers onto 17:33:42

16 their hard drive, the -- we do have articles of 17:33:45

17 tangible personal property that now exist in the 17:33:49

18 hard drive," you wouldn't dispute that, would you? 17:33:52

19 MS. ESKENAZI: Objection. It's vague and 17:33:56

20 ambiguous. Calls for expert testimony. 17:33:57

21 THE WITNESS: I think it -- I think it -- 17:34:07

22 it assumes its own conclusion, your question. 17:34:09

23 BY MR. PETROCELLI: 17:34:09

24 Q. So would you or would you not dispute that? 17:34:12

25 MS. ESKENAZI: Same objections. 17:34:15

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1 THE WITNESS: I would need to understand 17:34:15
2 the nature of the technology to which you're 17:34:17
3 hypothetically referring. And then I would need to 17:34:19
4 apply that definition. 17:34:22
5 BY MR. PETROCELLI: 17:34:22
6 Q. So, during all this time, from the 17:34:24
7 beginning of computer games to the time you filed 17:34:27
8 this lawsuit, what have you done precisely to 17:34:30
9 determine whether different types of video games 17:34:35
10 downloadable from the Internet constitute articles 17:34:40
11 of tangible personal property? 17:34:44
12 MS. ESKENAZI: Objection. Calls for 17:34:47
13 attorney-client privileged information. Also vague 17:34:49
14 and ambiguous. 17:34:49
15 BY MR. PETROCELLI: 17:34:49
16 Q. You may answer. 17:34:54
17 MS. ESKENAZI: And -- 17:34:55
18 THE WITNESS: I have only considered this 17:34:57
19 question in the context of the Saul Zaentz Company's 17:34:59
20 rights. 17:35:03
21 BY MR. PETROCELLI: 17:35:03
22 Q. Well, in connection with the Saul Zaentz 17:35:04
23 agreement, what exactly have you done in order to 17:35:06
24 make judgments about whether particular games are or 17:35:09
25 are not embraced by the agreement as items of 17:35:14

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1	tangible personal property?	17:35:18
2	A. If I've received information --	17:35:20
3	MS. ESKENAZI: One second.	17:35:21
4	THE WITNESS: Sorry. Sorry.	17:35:22
5	MS. ESKENAZI: Objection. Attorney-client	17:35:23
6	privilege.	17:35:24
7	To the extent you can answer that question	17:35:25
8	without breaching the privilege, be my guest.	17:35:28
9	THE WITNESS: Could I have the question	17:35:31
10	again, please?	17:35:48
11	(The reporter read the record	17:35:48
12	as follows:	17:35:48
13	"QUESTION: Well, in	17:35:04
14	connection with the Saul Zaentz	17:35:05
15	agreement, what exactly have you	17:35:06
16	done in order to make judgments	17:35:07
17	about whether particular games are	17:35:11
18	or are not embraced by the	17:35:14
19	agreement as items of tangible	17:35:16
20	personal property?")	17:35:19
21	THE WITNESS: I have considered the	17:35:49
22	information about the Saul Zaentz games that I --	17:35:49
23	that I have received.	17:35:53
24	BY MR. PETROCELLI:	17:35:53
25	Q. Well, how did you consider it?	17:35:55

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1	A. That would --	17:35:55
2	MS. ESKENAZI: Objection. Objection.	17:35:58
3	Attorney-client privilege.	17:36:00
4	To the extent you can answer that question	17:36:01
5	without breaching the privilege, you can answer.	17:36:03
6	THE WITNESS: That would depend on the form	17:36:05
7	the information took. If it was in writing, I would	17:36:07
8	read it. If it was communicated orally, I would	17:36:11
9	listen to it.	17:36:15
10	BY MR. PETROCELLI:	17:36:15
11	Q. So let's -- let's -- let's go through that,	17:36:17
12	then.	17:36:18
13	If you -- if you learned about a game or a	17:36:18
14	license like the Sierra license, for example, you	17:36:23
15	would read the document that you're being shown,	17:36:26
16	that mentioned the game, and you would think about	17:36:30
17	it for a few minutes.	17:36:35
18	Would you do anything else then to make a	17:36:36
19	determination of whether or not it was covered or	17:36:39
20	not covered?	17:36:42
21	MS. ESKENAZI: Objection. It's an	17:36:43
22	incomplete hypothetical. It's compound. And it's	17:36:44
23	vague and ambiguous.	17:36:46
24	THE WITNESS: I thought you were asking me	17:36:48
25	about assessing the games and the information --	17:36:49

1 BY MR. PETROCELLI: 17:36:49

2 Q. I am. 17:36:53

3 A. -- I had about games. 17:36:53

4 Q. Yeah. 17:36:54

5 A. Well, the docu- -- the agreement, for 17:36:54

6 example, the one you cite with Sierra, isn't a 17:36:56

7 description of games which were actually produced. 17:36:59

8 Q. Well -- 17:37:01

9 A. It's a framework. 17:37:02

10 Q. So, at any point in time when you saw a 17:37:03

11 game mentioned in any of the Zaentz documents, 17:37:05

12 whether it be a accounting statement or some other 17:37:08

13 statement, at any point in time did you stop and say 17:37:11

14 to yourself, "Okay, this is a computer game. I now 17:37:13

15 have to think about whether it's an item of tangible 17:37:17

16 personal property and I have to go through this 17:37:20

17 analysis"? Is that something that you did from time 17:37:23

18 to time? 17:37:27

19 MS. ESKENAZI: Objection. It's vague and 17:37:28

20 ambiguous. Compound. Incomplete hypothetical. 17:37:29

21 THE WITNESS: I did not consider that I had 17:37:33

22 to police the activity of the Saul Zaentz Company. 17:37:36

23 BY MR. PETROCELLI: 17:37:36

24 Q. So did you not understand my question? I 17:37:39

25 wasn't asking you about policing it. I was asking 17:37:41

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1 you whether in your role on behalf of the Estate, 17:37:44
2 when you learned about the existence in whatever 17:37:48
3 form you learned of a video game or a computer game 17:37:51
4 or an online game, whether you went through an 17:37:54
5 exercise whereby you thought about the game, looked 17:37:57
6 at the contract and made a judgment whether or not 17:38:02
7 it was permitted? 17:38:05

8 A. Are you asking me about the Saul Zaentz 17:38:06
9 games? 17:38:08

10 Q. Correct. 17:38:09

11 MS. ESKENAZI: Objection. It's vague and 17:38:10
12 ambiguous. It's compound. And it's an incomplete 17:38:11
13 hypothetical. 17:38:16

14 THE WITNESS: If I had information about 17:38:16
15 the games, I would consider it in the light of the 17:38:18
16 rights that the Saul Zaentz Company had. 17:38:21

17 BY MR. PETROCELLI: 17:38:21

18 Q. I didn't ask you if. I asked you, did you? 17:38:24

19 A. I don't recall the details. 17:38:26

20 Q. Did you ever -- at any point in time, can 17:38:27
21 you ever remember going through this exercise, prior 17:38:31
22 to the events of September 2010, in which you made a 17:38:34
23 deliberate, conscious effort to consider whether a 17:38:40
24 particular game or usage made by Zaentz of a 17:38:43
25 computer game was covered or not covered by the 17:38:49

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1 agreement? 17:38:54

2 And I'm not talking about the text base 17:38:54

3 versus graphics, I'm talking about the issue of 17:38:56

4 whether or not there was a physical component to it? 17:38:59

5 MS. ESKENAZI: Objection. Calls for 17:39:03

6 attorney-client privileged information. 17:39:04

7 If you can answer that question without 17:39:06

8 divulging attorney-client privileged information, 17:39:07

9 you're permitted to answer. But you should carve 17:39:11

10 out any attorney-client privileged information from 17:39:13

11 your answer. 17:39:16

12 THE WITNESS: I'm going to answer your 17:39:18

13 question with an example referring back to documents 17:39:19

14 shown to me already today. 17:39:22

15 Mr. Ulin showed me some correspondence, 17:39:24

16 part of which was a review of one of the -- the Saul 17:39:31

17 Zaentz games or the Saul Zaentz licensed games. 17:39:35

18 When I looked at that, I observed what was said 17:39:40

19 about the game and insofar as it told me about how 17:39:42

20 it was purchased or what its -- what its form was, I 17:39:45

21 took that into account. 17:39:51

22 BY MR. PETROCELLI: 17:39:52

23 Q. And -- and what did you decide? 17:39:52

24 A. In relation to that particular -- 17:39:55

25 Q. To whether there was a physical component 17:39:57

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1 or not to the game and, therefore, whether it was 17:39:59
2 authorized? 17:40:02
3 A. In relation to that particular article, it 17:40:04
4 referred to personal computers. It had -- it had 17:40:07
5 information in it which indicated a purchase of a 17:40:13
6 physical object. 17:40:15
7 Q. So did you ever feel -- felt like you -- so 17:40:16
8 from the -- the very first time you had been working 17:40:21
9 with respect to computer games, especially games 17:40:23
10 that are -- have -- can be delivered online or 17:40:27
11 played online, you've always been conscious of the 17:40:31
12 requirement that there be some physical component to 17:40:38
13 it; is that correct? 17:40:41
14 A. I didn't agree with the first part of 17:40:44
15 your -- your question in -- 17:40:47
16 Q. From -- from the inception of your work 17:40:50
17 on -- on the Zaentz agreements for the Tolkiens, 17:40:52
18 you've always been conscious of the requirement, at 17:40:57
19 least under your view of the -- of the merchandise 17:41:03
20 agreement, that there be a physical component 17:41:04
21 purchased for there to be a rights under the 17:41:07
22 agreement, correct? 17:41:15
23 MS. ESKENAZI: Objection. Vague and 17:41:16
24 ambiguous. 17:41:17
25 THE WITNESS: My -- 17:41:18

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1 BY MR. PETROCELLI: 17:41:18

2 Q. For Zaentz to have rights for that item? 17:41:19

3 A. My understanding has always been that there 17:41:21

4 had to be the purchase of a game on physical 17:41:23

5 media -- 17:41:25

6 Q. Okay. 17:41:26

7 A. -- in order for it to fall within the 17:41:27

8 rights -- 17:41:28

9 Q. And -- and every single time -- 17:41:28

10 A. Could I just finish the sentence? 17:41:30

11 Q. Okay. Please finish your answer. 17:41:32

12 A. In order for it to be encompassed by the 17:41:34

13 rights of the Saul Zaentz Company. 17:41:36

14 Q. And every single time that you came across 17:41:37

15 a video game or a computer game, you were aware of 17:41:41

16 that requirement, correct? 17:41:45

17 A. Every time I came across a Saul Zaentz 17:41:48

18 game? 17:41:50

19 Q. Yes. Any time you saw a reference to a 17:41:51

20 license agreement, to a -- to a -- to a computer 17:41:52

21 game in an accounting statement or to a schedule, 17:41:56

22 you were always aware that every single such 17:41:59

23 computer game had to have a physical component 17:42:01

24 that's purchased in -- in a store, correct? 17:42:04

25 A. Not a physical component. It had to take 17:42:09

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1 the form -- it had to be a physical object. 17:42:11

2 Q. Meaning a disc or a cartridge? 17:42:15

3 A. Or some other physical -- 17:42:17

4 Q. Well, are you aware of any other 17:42:19

5 physical -- 17:42:20

6 A. No, but then to the extent that there might 17:42:20

7 have been some, that was relevant to know. 17:42:23

8 Q. Like what? 17:42:24

9 A. I can't give an example. 17:42:25

10 Q. Okay. Well, at -- at -- do you ever 17:42:26

11 remember writing back to Zaentz, at any point in 17:42:30

12 time, at any time in the 20 years or so you've been 17:42:34

13 dealing with this, asking "Is there a physical 17:42:38

14 component that's purchased with respect to this 17:42:41

15 computer game? I need to know that in order to tell 17:42:45

16 you whether or not this is authorized." 17:42:48

17 MS. ESKENAZI: Objection. 17:42:50

18 BY MR. PETROCELLI: 17:42:50

19 Q. Do you -- do you ever recall asking that 17:42:52

20 question in writing? 17:42:54

21 MS. ESKENAZI: Objection. 17:42:56

22 THE WITNESS: No, because I had no need to 17:42:56

23 do so. 17:42:57

24 MS. ESKENAZI: Objection. 17:42:58

25 BY MR. PETROCELLI: 17:42:58

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1 Q. I didn't ask you if you had no need to do 17:42:59
2 that, but now that you volunteered the self-serving 17:43:01
3 response, I'll follow up on it, okay? 17:43:04
4 MS. ESKENAZI: I'm going to interpose a 17:43:06
5 late objection. When I was -- 17:43:08
6 BY MR. PETROCELLI: 17:43:08
7 Q. You had no -- 17:43:08
8 MS. ESKENAZI: Can we do this one at a 17:43:09
9 time, please? One at a time. You get to ask the 17:43:10
10 question -- 17:43:13
11 MR. PETROCELLI: Go for it. 17:43:13
12 MS. ESKENAZI: -- I get to pose the 17:43:14
13 objections and you get to answer the questions. 17:43:15
14 MR. PETROCELLI: And she gets to object, 17:43:17
15 too, apparently. 17:43:18
16 MS. ESKENAZI: Yeah, well, apparently -- 17:43:18
17 MR. PETROCELLI: She's good at it, too. 17:43:19
18 But go for it. Go ahead. 17:43:21
19 MS. ESKENAZI: Let me interpose an 17:43:23
20 objection which is vague and ambiguous. It's been 17:43:25
21 asked and answered. 17:43:26
22 BY MR. PETROCELLI: 17:43:26
23 Q. What about with respect to games made by 17:43:35
24 or -- or licensed by Warner Bros. games or any of 17:43:38
25 the Warner Bros. entities, including New Line, did 17:43:42

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1 you ever -- did you ever communicate to Warner 17:43:46
2 Bros. or New Line that any computer games needed to 17:43:50
3 in- -- include a physical component on which the 17:44:00
4 contents of the game actually appeared, like a disc 17:44:04
5 or a cartridge? Did you ever communicate that to 17:44:07
6 them in writing? 17:44:09
7 A. I don't believe so. 17:44:11
8 Q. Okay. Did you ever have a -- a direct 17:44:12
9 conversation with anybody, either at Zae- -- Zaentz, 17:44:18
10 New Line or Warner Bros., prior to September 2010, 17:44:22
11 that any and all computer games needed to have a 17:44:27
12 disc or a cartridge or some other physical 17:44:33
13 component? 17:44:35
14 A. I -- 17:44:40
15 MS. ESKENAZI: Objection. 17:44:42
16 THE WITNESS: Sorry. 17:44:42
17 MS. ESKENAZI: It's vague and ambiguous. 17:44:42
18 MR. PETROCELLI: That's all? 17:44:44
19 MS. ESKENAZI: Yes. 17:44:45
20 MR. PETROCELLI: Okay. 17:44:45
21 THE WITNESS: I do recall a conversation 17:44:48
22 with a person at Warner Bros. which touched on this 17:44:50
23 area. It -- it didn't consist of what you're 17:44:56
24 inviting me to state. 17:45:01
25 BY MR. PETROCELLI: 17:45:01

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1 Q. Who was the person? 17:45:04

2 A. I believe it was a telephone call with 17:45:06

3 Kevin. 17:45:09

4 Q. Tsujihara? 17:45:12

5 A. Yes. 17:45:13

6 Q. Okay. And when did that occur? 17:45:14

7 A. I think it was earlier in 2010. 17:45:16

8 Q. Okay. And the -- did you make a note of 17:45:20

9 the call? Do you have a memo about it? 17:45:23

10 A. I don't recall. 17:45:26

11 Q. Okay. Have you ever seen any document 17:45:29

12 referring to that call or mentioning that call? 17:45:30

13 A. I don't recall. 17:45:32

14 Q. Did you review any documents like that in 17:45:37

15 preparation for your deposition, a document that 17:45:39

16 memorialized the call or referred to the call with 17:45:42

17 Kevin? 17:45:44

18 A. No. 17:45:44

19 Q. Okay. And what did you say on -- on the 17:45:46

20 subject and what did he say? 17:45:49

21 MS. ESKENAZI: Objection. Vague and 17:45:54

22 ambiguous. 17:45:55

23 THE WITNESS: I have to explain why that 17:45:55

24 call took place in order to answer your question. 17:46:00

25 BY MR. PETROCELLI: 17:46:00

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1 Q. How long will it take? Do it quickly, 17:46:04
2 please. 17:46:04
3 A. At the beginning of 2010, I can't be 17:46:11
4 precise as to the date, I met with John Rogovin, 17:46:14
5 general counsel of Warner Bros. This was following 17:46:19
6 the conclusion of the film participation litigation. 17:46:22
7 Mr. Rogovin wanted to explore with me how 17:46:27
8 we could get our relationship on a better footing, 17:46:32
9 because obviously we had up until that point been 17:46:36
10 litigants. 17:46:39
11 I indicated to him that the framework of 17:46:40
12 agreements in this area, namely involving the Saul 17:46:44
13 Zaentz Company and downstream of the Saul Zaentz 17:46:52
14 Company, Warner Bros., was extremely complicated. 17:46:55
15 And it was agreed that he would set up calls with a 17:47:01
16 couple of colleagues who were more closely involved 17:47:03
17 with these matters so that I could explain that to 17:47:07
18 them. 17:47:10
19 Q. Okay. Then what -- what did you and what 17:47:12
20 did Kevin say on the subject that I asked you about, 17:47:15
21 which was whether there had to be a physical 17:47:19
22 component to a video game in order for it to be 17:47:22
23 covered by the merchandising agreement? 17:47:25
24 A. We did not deal with the specifics of the 17:47:26
25 subject. Mr. Tsujihara -- 17:47:29

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1 Q. "Tsujiyara." 17:47:35

2 A. -- Tsujiyara was involved at that time in 17:47:37

3 the area of computer games, electronic products 17:47:39

4 within Warner Bros., and I alerted him to the very 17:47:45

5 complicated agreements that governed that area. 17:47:49

6 Q. So there was no direct conversation on this 17:47:52

7 subject, is that what you're telling me? 17:47:55

8 MS. ESKENAZI: Objection. Misstates the 17:47:58

9 testimony. 17:47:59

10 THE WITNESS: Well, we had a conversation. 17:47:59

11 BY MR. PETROCELLI: 17:47:59

12 Q. Well, what -- can you just tell me what was 17:48:01

13 said by you and him on the subject of whether or not 17:48:05

14 a physical device was required, disc, a cartridge, 17:48:07

15 anything like that in order for Warner Bros. or New 17:48:11

16 Line or Zaentz to have rights? 17:48:15

17 A. I did not go into the detail. I simply 17:48:18

18 alerted him to the fact that the agreements in this 17:48:22

19 area were very complicated, that they dated back to 17:48:26

20 1969, that they did not cover modern technologies 17:48:32

21 and that one had, therefore, to be aware of that 17:48:35

22 fact. 17:48:39

23 Q. Anything beyond that that you can recall? 17:48:39

24 A. No. 17:48:41

25 Q. And what did he say, if you can recall? 17:48:42

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1 A. I think he was very gracious on the 17:48:44
2 telephone. He listened to what I said. 17:48:46
3 Q. Okay. When is the very first time that you 17:48:51
4 can ever remember forming the -- the -- the view or 17:48:53
5 having the conclusion that with respect to any video 17:48:58
6 game or computer game, that there had to be -- you 17:49:03
7 had to actually have a disc or a cartridge or other 17:49:08
8 physical medium in order for Warner Bros. or Zaentz 17:49:12
9 to have rights under the agreements? When is the 17:49:20
10 very first time you formed that view? 17:49:24
11 A. When I became involved in the review of 17:49:25
12 computer games licensing in the '90s. 17:49:27
13 Q. In the early '90s? 17:49:29
14 A. Yeah. 17:49:30
15 Q. Okay. So from 1992 to 2010, that's almost 17:49:31
16 20 years, you can't recall a single instance when 17:49:36
17 you either wrote or said to Warner Bros., New Line, 17:49:41
18 or Zaentz, that a physical disc or cartridge or 17:49:47
19 other physical device containing the contents of the 17:49:54
20 game must exist in order for there to be coverage 17:49:57
21 under the agreements, correct? 17:50:02
22 A. I -- 17:50:05
23 MS. ESKENAZI: Objection. Vague and 17:50:06
24 ambiguous. Compound. 17:50:06
25 THE WITNESS: I had no reason to remind 17:50:08

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1 Mr. Bendich of the scope of the Saul Zaentz rights. 17:50:10

2 BY MR. PETROCELLI: 17:50:10

3 Q. Well, you know -- you know that's not what 17:50:15

4 I asked you, right? 17:50:16

5 A. That's my answer. 17:50:17

6 Q. But you -- you don't have the right to 17:50:19

7 answer the way you want. You have to answer the 17:50:20

8 question. 17:50:22

9 So please read the question back. I move 17:50:23

10 to strike that answer as nonresponsive. 17:50:25

11 MS. ESKENAZI: She answered the question. 17:50:26

12 BY MR. PETROCELLI: 17:50:26

13 Q. You are -- you are explaining -- you are 17:50:29

14 explaining why you said -- or are trying to explain 17:50:31

15 why you said or did nothing, and I'm eliciting that 17:50:36

16 you said or did nothing. 17:50:39

17 Do you understand the difference? 17:50:40

18 MS. ESKENAZI: Objection. You're badgering 17:50:41

19 the witness. 17:50:44

20 BY MR. PETROCELLI: 17:50:44

21 Q. Please answer my question. 17:50:45

22 Read it back, please. 17:50:46

23 (The reporter read the record 17:51:07

24 as follows: 17:51:07

25 "QUESTION: So from 1992 to 17:49:31

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1 2010, that's almost 20 years, you 17:49:33
2 can't recall a single instance 17:49:38
3 when you either wrote or said to 17:49:41
4 Warner Bros., New Line, or Zaentz, 17:49:45
5 that a physical disc or cartridge 17:49:49
6 or other physical device 17:49:54
7 containing the contents of the 17:49:56
8 game must exist in order for there 17:49:57
9 to be coverage under the 17:50:01
10 agreements, correct?") 17:50:03
11 THE WITNESS: I did not do so because there 17:51:07
12 was no need to do so. 17:51:09
13 BY MR. PETROCELLI: 17:51:09
14 Q. Well, I move to strike the second part of 17:51:10
15 your answer starting with the word "because." 17:51:16
16 Did anybody assist you in forming the view 17:51:20
17 back in the early '90s when you created this 17:51:34
18 viewpoint that a physical disc or cartridge or other 17:51:38
19 similar device was required to contain the contents 17:51:44
20 of the game in order for it to be covered under the 17:51:48
21 agreements or did -- did you reach that on your own? 17:51:52
22 MS. ESKENAZI: Objection. Attorney-client 17:51:56
23 privilege. 17:51:59
24 To the extent that you consulted with 17:51:59
25 others in the formation of your opinion, and that 17:52:04

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1 was with your clients or other attorneys, that needs 17:52:07
2 to be excluded from your answer. 17:52:12
3 BY MR. PETROCELLI: 17:52:12
4 Q. Well, it's -- does not need to be excluded 17:52:16
5 from your answer. But we'll deal with that. 17:52:19
6 A. Please, could I have the question again. 17:52:22
7 Q. The question called for a "yes" or "no" 17:52:25
8 answer. 17:52:28
9 Can you please repeat it. 17:52:28
10 (The reporter read the record 17:52:47
11 as follows: 17:52:47
12 "QUESTION: Did anybody 17:51:27
13 assist you in forming the view 17:51:28
14 back in the early '90s, when you 17:51:34
15 created this viewpoint that a 17:51:37
16 physical disc or cartridge or 17:51:41
17 other similar device was required 17:51:44
18 to contain the contents of the 17:51:46
19 game in order for it to be covered 17:51:48
20 under the agreements or did you 17:51:52
21 reach that on your own?") 17:51:53
22 MS. ESKENAZI: Same objection. 17:52:48
23 THE WITNESS: That calls for privileged 17:52:49
24 information. 17:52:52
25 BY MR. PETROCELLI: 17:52:52

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1 Q. Did anybody assist you in forming the view 17:52:54
2 that you have expressed, that a physical disc, 17:52:57
3 cartridge or other similar device was necessary in 17:53:03
4 order for the game to be covered under the 17:53:08
5 agreement? 17:53:11

6 MS. ESKENAZI: Same -- same objection. 17:53:12
7 BY MR. PETROCELLI: 17:53:12

8 Q. It does not call for privileged 17:53:14
9 information. It calls for a fact. And then I'm -- 17:53:16
10 the next question is going to be, who assisted you, 17:53:17
11 and then we'll take it from there. But this is the 17:53:20
12 foundational question. So please answer it. 17:53:23

13 MS. ESKENAZI: If -- if the question is did 17:53:27
14 anybody assist you and if there's a stipulation that 17:53:29
15 it will not waive any -- 17:53:33

16 MR. PETROCELLI: You have it. 17:53:35

17 MS. ESKENAZI: -- attorney-client 17:53:37
18 privilege, I'll let her answer that one question. 17:53:38
19 It's a "yes" or "no" question. 17:53:41

20 THE WITNESS: Yes. 17:53:42

21 BY MR. PETROCELLI: 17:53:42

22 Q. Who -- who assisted you? 17:53:43

23 A. Mr. Williamson. 17:53:44

24 Q. Okay. Was it in a one-on-one conversation? 17:53:46

25 A. Most of my communications with 17:53:52

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1 Mr. Williamson would have been face-to-face 17:54:00
2 communications. 17:54:03
3 Q. Is this a conversation that you had with 17:54:04
4 Mr. Williamson specifically on this subject of 17:54:07
5 whether a physical cartridge or disc or other device 17:54:12
6 was required in order for Zaentz, Warner Bros. or 17:54:18
7 New Line to have rights? 17:54:21
8 MS. ESKENAZI: Well, again, I'm going to 17:54:24
9 let the witness answer "yes" or "no" to the extent I 17:54:26
10 have a stipulation that -- 17:54:28
11 MR. PETROCELLI: You do. 17:54:29
12 MS. ESKENAZI: -- it does not waive the 17:54:30
13 attorney-client privilege, but I think you're 17:54:32
14 skirting very close to attorney-client 17:54:33
15 communications. 17:54:36
16 MR. PETROCELLI: I'm nowhere near -- I'm 17:54:36
17 nowhere near invading the privilege. 17:54:38
18 MS. ESKENAZI: I think you know you are. 17:54:39
19 MR. PETROCELLI: I don't even think this 17:54:41
20 witness has a right to assert the privilege, but 17:54:42
21 that's another subject. We'll -- we'll -- she can't 17:54:44
22 have it both ways. She's going to be precluded from 17:54:46
23 testifying or she's going to have to testify fully. 17:54:49
24 Let's answer this question. 17:54:52
25 THE WITNESS: Well, I'm really sorry but 17:54:53

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1 the question was a long time ago. I have to have it 17:54:55
2 again. 17:54:56
3 MR. PETROCELLI: I don't blame you. Yes. 17:54:56
4 Can you please repeat the question. 17:54:56
5 (The reporter read the record 17:54:56
6 as follows: 17:54:56
7 "QUESTION: Is this a 17:54:05
8 conversation that you had with Mr. 17:54:06
9 Williamson specifically on this 17:54:09
10 subject of whether a physical 17:54:12
11 cartridge or disc or other device 17:54:16
12 was required in order for Zaentz, 17:54:18
13 Warner Bros. or New Line to have 17:54:20
14 rights?") 17:54:22
15 THE WITNESS: Well, at the time of 17:55:12
16 conversing with Mr. Williamson, New Line wasn't on 17:55:15
17 the scene. 17:55:15
18 BY MR. PETROCELLI: 17:55:21
19 Q. Fair enough. 17:55:21
20 A. And the question -- this question would 17:55:21
21 have been an element of our discussion. 17:55:23
22 Q. Okay. Did you memorialize that discussion? 17:55:25
23 MS. ESKENAZI: That's a "yes" or "no" 17:55:31
24 answer. 17:55:32
25 THE WITNESS: You mean did I create a 17:55:32

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1 document, is that what you mean by "memorialize"? 17:55:34

2 BY MR. PETROCELLI: 17:55:35

3 Q. Yes. 17:55:35

4 A. I don't -- I don't think so. 17:55:36

5 Q. Have you ever seen any reference to that 17:55:39

6 conversation in a document? 17:55:40

7 MS. ESKENAZI: Objection. Same objection. 17:55:42

8 You can answer "yes" or "no." 17:55:47

9 THE WITNESS: No. 17:55:47

10 BY MR. PETROCELLI: 17:55:47

11 Q. What year did the conversation occur? 17:55:48

12 A. Well, I mean, this discussion when I became 17:55:49

13 involved in the Tolkien work, I mean, it wasn't 17:55:54

14 just -- it was a lengthy period of time over which 17:55:59

15 this matter of who was going to be licensing 17:56:02

16 computer games was -- was live. 17:56:05

17 Q. What year is this, '92? 17:56:11

18 A. Well, I think the matter was broached by 17:56:14

19 Mr. Bendich at the meeting in -- 17:56:16

20 Q. Berkeley? 17:56:19

21 A. -- 1993. 17:56:19

22 Q. The Berkeley meeting in 19- -- the one you 17:56:20

23 testified earlier? 17:56:23

24 A. That's my recollection. 17:56:24

25 Q. Okay. And so that's -- that's 20 years 17:56:25

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1 ago? 17:56:30

2 A. Yes. 17:56:32

3 Q. And you recall what Mr. Williamson told you 17:56:34

4 20 years ago, even though you've never once 17:56:37

5 documented it? 17:56:40

6 MS. ESKENAZI: Objection. Vague and 17:56:41

7 ambiguous. Argumentative. 17:56:44

8 BY MR. PETROCELLI: 17:56:44

9 Q. And yet you can't recall a single document 17:56:45

10 that you reviewed over the weekend? 17:56:48

11 MS. ESKENAZI: Objection. Argumentative. 17:56:52

12 That's not really a question. 17:56:53

13 MR. PETROCELLI: It's not. 17:56:54

14 MS. ESKENAZI: Why don't you ask a 17:56:55

15 question. 17:56:57

16 THE WITNESS: What I'm trying to -- 17:56:57

17 BY MR. PETROCELLI: 17:56:59

18 Q. I'll -- I'll put a -- 17:56:59

19 MS. ESKENAZI: There's no question pending. 17:57:00

20 BY MR. PETROCELLI: 17:57:00

21 Q. I'll put a question to you. 17:57:02

22 Did Mr. Williamson tell you how he knew 17:57:03

23 that a physical disc or cartridge was required in 17:57:12

24 order for there to be rights? 17:57:18

25 MS. ESKENAZI: Objection. Attorney-client 17:57:19

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1 privileged. Instructing the witness not to answer. 17:57:20

2 BY MR. PETROCELLI: 17:57:20

3 Q. Other than your conversation with 17:57:24

4 Mr. Williams, your -- your -- he was your law 17:57:24

5 partner, right? Were you -- were you a partner at 17:57:27

6 the time or a -- 17:57:32

7 A. I was a partner in 1993. 17:57:33

8 Q. Okay. So this is right around the time 17:57:36

9 that you were making partner at your law firm? 17:57:38

10 A. I was already a partner. 17:57:39

11 Q. Okay. So other than the conversation with 17:57:41

12 your law partner in 1993, did anybody else assist 17:57:45

13 you in forming this view that you've held for 20 17:57:53

14 years, that a physical disc or cartridge was 17:57:57

15 required? 17:58:02

16 A. I don't believe so. 17:58:03

17 Q. Okay. Now, you -- you have said repeatedly 17:58:03

18 throughout the day, over all of my numerous motions 17:58:20

19 to strike, that there was no reason to tell Zaentz 17:58:23

20 or tell Warner Bros. or tell New Line or whoever 17:58:30

21 about this topic. 17:58:34

22 Do you recall saying that a number of 17:58:36

23 times? 17:58:38

24 A. Yes. 17:58:39

25 Q. Okay. How do you know there was no reason? 17:58:39

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1	A. Because --	17:58:47
2	MS. ESKENAZI: Objection. Vague and	17:58:47
3	ambiguous.	17:58:47
4	BY MR. PETROCELLI:	17:58:47
5	Q. If you never discussed it with them, which	17:58:49
6	you testified you never did, you never discussed	17:58:51
7	this topic with Zaentz, you never discussed this	17:58:53
8	topic with New Line, you never discussed this topic	17:58:55
9	with Warner Bros., how did you know there was no	17:58:57
10	reason to discuss it with them?	17:59:00
11	MS. ESKENAZI: Objection. Misstates the	17:59:02
12	testimony.	17:59:03
13	THE WITNESS: It's not correct that I	17:59:05
14	didn't cover this ground with Al Bendich of the Saul	17:59:06
15	Zaentz Company.	17:59:10
16	BY MR. PETROCELLI:	17:59:10
17	Q. I previously asked you these questions and	17:59:12
18	the only person that you identified was Kevin	17:59:17
19	Tsujihara, and even then you indicated that the	17:59:19
20	conversation did not get into this level of detail.	17:59:22
21	Is it -- is it your testimony now that you	17:59:25
22	had a specific conversation with Mr. Bendich that a	17:59:27
23	physical disc or cartridge was required in order for	17:59:32
24	him to have rights, and that if it was only	17:59:38
25	downloadable, then he didn't have rights?	17:59:42

1 MS. ESKENAZI: Objection. It's 17:59:47
2 argumentative. It's vague and ambiguous. 17:59:47
3 BY MR. PETROCELLI: 17:59:49
4 Q. Did you have that conversation with him, 17:59:49
5 yes or no? 17:59:51
6 MS. ESKENAZI: And it mis- -- and it 17:59:51
7 misstates the prior testimony. 17:59:52
8 THE WITNESS: In and around 1993 and 17:59:54
9 thereafter, we discussed the ambit of Zaentz's 17:59:58
10 rights. We did not look forward to the position in 18:00:02
11 2013. We dealt with -- we looked at the agreements 18:00:09
12 then, we analyzed them, and that -- and this -- this 18:00:14
13 is -- this is what we've been talking about in my 18:00:20
14 evidence this morning. 18:00:23
15 BY MR. PETROCELLI: 18:00:23
16 Q. I have no idea what you just said, but let 18:00:25
17 me just follow up. 18:00:28
18 I'm asking a very simple question. Did you 18:00:28
19 specifically discuss with -- with anybody at Saul 18:00:34
20 Zaentz Company, anybody at Warner Bros., anybody at 18:00:40
21 New Line, that the computer games, the video games, 18:00:42
22 the online games, whatever, required a disc or 18:00:52
23 cartridge or some other device containing the 18:00:57
24 contents of the game in order for rights to be 18:01:00
25 encompassed within the agreements? Yes or no? 18:01:04

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1 MS. ESKENAZI: Objection. It's compound. 18:01:08
2 It's vague and ambiguous. 18:01:09
3 THE WITNESS: I'm not -- I'm not -- that 18:01:12
4 question is not susceptible of an accurate answer 18:01:14
5 which is yes or no. In order to answer the question 18:01:18
6 accurately, I have to tell you about the nature of 18:01:21
7 the communication with Saul Zaentz Company in 1993. 18:01:25
8 We looked at the 1969 merchandising 18:01:29
9 agreements. When I dealt with the specific point 18:01:32
10 there as to what was the nature of the current 18:01:37
11 games, implicit in that was the prior discussion 18:01:40
12 where we talked -- where Mr. Williamson had talked 18:01:44
13 about and it had been agreed that a computer game 18:01:47
14 had to be an article of tangible personal property. 18:01:51
15 BY MR. PETROCELLI: 18:01:51
16 Q. My question is very simple. Did you in 18:01:57
17 your -- whatever the context is, whatever 18:02:00
18 circumstances there were, whatever the history was, 18:02:03
19 I'm only asking whether you had a specific 18:02:06
20 conversation with -- with Saul Zaentz or anybody 18:02:09
21 else, and I -- and I broadened it to include anybody 18:02:14
22 at Warner Bros. or at New Line or Miramax or anybody 18:02:16
23 else who was on the other side of these agreements, 18:02:19
24 that they only had rights to merchandise video games 18:02:22
25 or computer games if there was a physical disc, a 18:02:26

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1 physical cartridge or some other physical device 18:02:30
2 containing the game that could be purchased? Did 18:02:33
3 you have that direct conversation with anybody? 18:02:36
4 MS. ESKENAZI: Objection. It's been asked 18:02:38
5 and answered. 18:02:40
6 You can answer again. 18:02:40
7 THE WITNESS: I think I've dealt with your 18:02:41
8 question insofar as it relates to people at New Line 18:02:45
9 and people at Warner Bros. 18:02:47
10 BY MR. PETROCELLI: 18:02:48
11 Q. You dealt with it by saying you had no such 18:02:50
12 discussion, correct? 18:02:53
13 MS. ESKENAZI: Misstates the testimony. 18:02:55
14 BY MR. PETROCELLI: 18:02:55
15 Q. Is that correct? 18:02:55
16 A. Is what correct? That it misstates the 18:02:58
17 testimony? 18:02:59
18 Q. That you had no such discussions with 18:03:00
19 people at Warner Bros. and New Line on that subject, 18:03:01
20 correct? 18:03:01
21 A. Well, I've referred to my conversation with 18:03:05
22 Mr. -- sorry. 18:03:07
23 Q. Tsujihara? 18:03:10
24 A. Tsujihara. 18:03:11
25 Q. But you've indicated that it didn't get 18:03:12

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1 into that level of detail. 18:03:14

2 A. I'm just referring you to the -- the -- my 18:03:15

3 earlier testimony on this subject in relation to 18:03:20

4 Warner Bros. and New Line. 18:03:24

5 Q. And so other than the Tsujihara 18:03:25

6 conversation, which the record speaks for itself, 18:03:27

7 you didn't discuss this subject with anybody at 18:03:33

8 either Warner Bros. or New Line, correct? 18:03:36

9 A. I don't recall doing so. 18:03:38

10 Q. Okay. Now -- now -- now, let's go to 18:03:40

11 Zaentz. 18:03:44

12 You referenced a meeting with Mr. Zaentz in 18:03:45

13 Berkeley in -- is that Berkeley, California? 18:03:49

14 Berkeley, London? What Berkeley are we talking 18:03:51

15 about? 18:03:54

16 A. The Berkeley where the Saul Zaentz Company 18:03:55

17 is headquartered. 18:03:58

18 Q. Okay. And where is that located, what 18:03:59

19 state? 18:04:01

20 A. It's in California. 18:04:01

21 Q. Okay. In 1993 -- 18:04:01

22 A. Yes. 18:04:04

23 Q. -- right? 18:04:04

24 And first of all, is that the only 18:04:05

25 discussion that comes to mind in response to my 18:04:08

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1 question, is that 1993 meeting? 18:04:12

2 MS. ESKENAZI: Objection. It's vague and 18:04:17

3 ambiguous. 18:04:20

4 THE WITNESS: I've already explained that 18:04:20

5 this matter of computer games was under discussion 18:04:21

6 for a period of time, orally and in correspondence. 18:04:27

7 BY MR. PETROCELLI: 18:04:27

8 Q. Yeah, but you understand that I'm not 18:04:29

9 interested in discussions about computer games that 18:04:31

10 involve whether it's graphic or text or all the 18:04:33

11 other issues associated with computer games. We're 18:04:35

12 talking about a very -- I'm talking about the last 18:04:38

13 couple of hours, a very separate and distinct issue, 18:04:41

14 which is the concept that you've been positing, that 18:04:45

15 a physical disc or cartridge is required and has to 18:04:52

16 be purchased in order for there to be rights under 18:04:56

17 the agreement. 18:04:57

18 And I'm only trying to find out from you 18:04:58

19 whether you discussed that specific topic in those 18:05:01

20 terms with someone at the Zaentz company, yes or no? 18:05:04

21 A. That subject was part of the review that we 18:05:11

22 conducted during those years. And the second 18:05:17

23 element you said, in those terms, possibly not in 18:05:18

24 those terms. 18:05:22

25 Q. Possibly not in those terms? 18:05:22

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1 A. Possibly not in those specific terms. 18:05:24

2 Q. Not in those specific terms. Okay. 18:05:26

3 A. We referred to the matter of what was in 18:05:27

4 the merchandising agreement and you said you're not 18:05:33

5 interested in graphics or -- 18:05:34

6 Q. Text. 18:05:36

7 A. -- text-based. But the point is, you 18:05:37

8 didn't get into that discussion without there being 18:05:40

9 an article of tangible personal property. And so 18:05:43

10 far as computer games were concerned, that meant 18:05:46

11 that they had to take the form of a physical object. 18:05:48

12 Q. Over the years, did you -- did you -- prior 18:05:51

13 to 2010, did you ever ask a lawyer to review the 18:06:03

14 contracts and -- and make a legal opinion on that 18:06:13

15 subject? 18:06:17

16 MS. ESKENAZI: Objection. Attorney-client 18:06:19

17 privilege. 18:06:20

18 MR. PETROCELLI: It calls for a "yes" or 18:06:21

19 "no." 18:06:26

20 THE WITNESS: I don't recall doing so. 18:06:26

21 BY MR. PETROCELLI: 18:06:26

22 Q. Do you know whether your clients did so? 18:06:29

23 A. I don't believe they would have done that. 18:06:36

24 Q. Okay. 18:06:36

25 MS. ESKENAZI: We've been going for about 18:06:39

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1 an hour. 18:06:41

2 MR. PETROCELLI: Take a short break. 18:06:42

3 MS. ESKENAZI: Want to take a short break 18:06:43

4 before we -- 18:06:44

5 MR. PETROCELLI: Before we conclude for the 18:06:44

6 day. 18:06:46

7 THE VIDEOGRAPHER: Off the record at 6:07 18:06:50

8 p.m. 18:06:52

9 (Brief recess.) 18:16:31

10 THE VIDEOGRAPHER: We're back on the record 18:29:29

11 at 6:30 p.m. Counsel may proceed. 18:29:46

12 (The document referred to was

13 marked for identification as

14 Exhibit 21 and attached to this

15 deposition.)

16 BY MR. PETROCELLI:

17 Q. Okay. In front of you is Exhibit 21 which 18:29:54

18 is an article -- 18:29:56

19 MS. ESKENAZI: May I have a copy? 18:29:57

20 MR. PETROCELLI: You may. 18:29:58

21 Q. -- dated November 16, 2003 called "Lord of 18:29:59

22 the Gold Ring." 18:30:05

23 Have you ever seen this before? 18:30:06

24 MS. ESKENAZI: I note that this does not 18:30:17

25 have a Bates number on it. 18:30:18

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1 BY MR. PETROCELLI: 18:30:18

2 Q. Have you ever seen this before? 18:30:31

3 A. I think I have seen this article before. 18:30:32

4 Q. Do you generally, as part of your job 18:30:38

5 responsibilities, keep track of media reports about 18:30:42

6 the Tolkiens? 18:30:45

7 MS. ESKENAZI: Objection. Vague and 18:30:49

8 ambiguous. 18:30:49

9 THE WITNESS: The Tolkien clients? 18:30:52

10 BY MR. PETROCELLI: 18:30:52

11 Q. Yes. You know, articles that come out in 18:30:55

12 the press about them? Do you monitor that or stay 18:30:57

13 abreast of what's written? 18:31:03

14 MS. ESKENAZI: Objection. Vague and 18:31:06

15 ambiguous. Compound. 18:31:07

16 THE WITNESS: On behalf of the Tolkien 18:31:11

17 clients, we -- I'm just trying to -- I can't 18:31:17

18 remember what you -- how you phrased your question. 18:31:24

19 So sorry. 18:31:27

20 BY MR. PETROCELLI: 18:31:27

21 Q. It's a very general question. 18:31:28

22 A. I know. I'm just getting tired and I 18:31:29

23 wanted to be specific -- 18:31:33

24 Q. I'll repeat it. 18:31:34

25 A. -- what I heard. Pardon? 18:31:35

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1 Q. As part of your work for the Tolkiens, do 18:31:36
2 you keep track of press reports, media reports about 18:31:38
3 the family? 18:31:41
4 A. Yes, if -- if -- if I find them or somebody 18:31:43
5 draws them to my attention, yes, I do. 18:31:46
6 Q. Keep a file of them? 18:31:47
7 A. Not necessarily a separate file. 18:31:50
8 Q. Was this document in your file? 18:31:53
9 A. I don't know. 18:31:55
10 Q. It's a very long article. I'm going to ask 18:31:55
11 you just a couple of questions about it. 18:32:02
12 A. Before you ask those questions, may I read 18:32:04
13 it? 18:32:06
14 Q. It would take you 20 minutes to read it. 18:32:07
15 A. How do you know? 18:32:09
16 Q. Because there's 20 minutes left. 18:32:11
17 A. Oh. 18:32:12
18 Q. And I have a feeling you probably would use 18:32:13
19 all the 20 minutes to read the article. 18:32:15
20 MS. ESKENAZI: That calls for speculation. 18:32:17
21 THE WITNESS: I think you think I'm better 18:32:21
22 versed at this than I am. You put an idea into my 18:32:22
23 head now, though. 18:32:26
24 BY MR. PETROCELLI: 18:32:26
25 Q. Yeah, I'm going to ask you about the -- 18:32:27

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1 about the -- well, let me ask you this before you 18:32:29
2 read it. 18:32:31
3 Have you ever been interviewed by the press 18:32:32
4 about the Tolkiens? 18:32:35
5 A. I have on occasion, yes. 18:32:37
6 Q. Who interviewed you and when? 18:32:45
7 A. Well, the one instance I can recall is 18:32:48
8 recently I spoke to a journalist at Le Monde 18:32:51
9 newspaper, a French newspaper. 18:32:55
10 Q. About the Tolkiens? 18:32:57
11 A. It was about the -- the Tolk- -- the 18:32:59
12 Tolkien Estate's business activity. 18:33:09
13 Q. And did you speak on the record? 18:33:10
14 MS. ESKENAZI: Objection. Vague and 18:33:12
15 ambiguous. 18:33:12
16 BY MR. PETROCELLI: 18:33:12
17 Q. Do you know what I mean by that? Did 18:33:13
18 you -- 18:33:15
19 A. I -- I understand that to mean that she 18:33:16
20 could report -- it was a lady journalist -- that she 18:33:18
21 could report what I said. 18:33:21
22 Q. Yes. 18:33:24
23 A. Is that your understanding? 18:33:24
24 Q. That's what it means, yeah. 18:33:25
25 A. Yes, except in the case of that, I did -- 18:33:27

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1 the understanding was that I would see what she was 18:33:31
2 going to publish before she published it. 18:33:33
3 Q. And did you? 18:33:37
4 A. No. 18:33:38
5 Q. And was it published? 18:33:40
6 A. It was. 18:33:41
7 Q. Did she misquote you? 18:33:42
8 A. Yes. 18:33:45
9 Q. What -- what did she say you said that you 18:33:49
10 didn't say? 18:33:51
11 A. I can't -- I can't answer that question 18:33:51
12 without reference to the article. 18:33:54
13 Q. Did you ask for a retraction? 18:33:57
14 A. No. 18:33:58
15 Q. Did you contact her to tell her you had 18:33:59
16 been misquoted? 18:34:02
17 A. No. 18:34:02
18 Q. Was it a serious misquote or just a -- 18:34:06
19 MS. ESKENAZI: Objection. 18:34:11
20 BY MR. PETROCELLI: 18:34:11
21 Q. -- inconsequential error? 18:34:12
22 MS. ESKENAZI: Objection. Vague and 18:34:14
23 ambiguous. 18:34:16
24 THE WITNESS: At the time, I didn't -- I 18:34:16
25 didn't think it was material. 18:34:25

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1 BY MR. PETROCELLI: 18:34:25

2 Q. Okay. Let's go back to Exhibit -- what did 18:34:29

3 you say, 21? 18:34:33

4 And I want to draw your attention to the 18:34:34

5 paragraph at the end of the third page. 18:34:42

6 A. Okay. 18:34:48

7 Q. That says: 18:34:50

8 "But besieged by interview 18:34:51

9 requests Christopher" -- 18:34:53

10 A. Okay. 18:34:55

11 Q. Do you see that paragraph? 18:34:55

12 A. I see that paragraph. I'll now review the 18:34:56

13 document to see -- 18:34:58

14 Q. I don't want you to review the whole 18:35:00

15 document. I only want you to review that paragraph. 18:35:02

16 A. I know that but I won't understand the 18:35:04

17 context. 18:35:06

18 Q. Well, I'm not going to sit here and wait 18:35:06

19 ten minutes for you to review the document. I'm 18:35:09

20 just going to ask you questions within it and I'm 18:35:11

21 only going to ask you to review that one paragraph. 18:35:14

22 A. You said it was going to take 20 minutes 18:35:16

23 before. 18:35:19

24 Q. Yeah, I know. Just review the one 18:35:19

25 paragraph and then let the record note that you've 18:35:20

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1 asked to review the whole document. Okay? 18:35:22

2 THE WITNESS: Can I ask counsel whether 18:35:27

3 that's appropriate? 18:35:28

4 BY MR. PETROCELLI: 18:35:29

5 Q. It's my -- it's my examination and you 18:35:29

6 don't have the right to read a document from 18:35:31

7 beginning to end if I want to call your attention to 18:35:33

8 a specific paragraph. 18:35:35

9 MS. ESKENAZI: That's -- that's actually 18:35:37

10 not true. 18:35:37

11 MR. PETROCELLI: It's actually absolutely 18:35:41

12 true. 18:35:43

13 MS. ESKENAZI: And -- 18:35:43

14 MR. PETROCELLI: But -- 18:35:43

15 MS. ESKENAZI: And it just means that his 18:35:44

16 question -- 18:35:45

17 MR. PETROCELLI: Bonnie, go ahead, if you 18:35:45

18 want her to read the -- you want her to read the 18:35:46

19 whole document, knowing that it's going to take 15 18:35:47

20 minutes, go right ahead. I'm -- I'm not going to 18:35:49

21 allow it to happen. 18:35:52

22 MS. ESKENAZI: It just -- it just means 18:35:53

23 that his questions and your answers may not be 18:35:54

24 accurate because it may be completely out of 18:35:56

25 context. That's what it means. 18:35:59

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1 THE WITNESS: Let me review -- let me 18:36:01
2 review the article and I'll do so as quickly as I 18:36:03
3 can. 18:36:07
4 BY MR. PETROCELLI: 18:36:07
5 Q. No. That's not acceptable. 18:36:08
6 My question -- I'm directing your attention 18:36:10
7 to the third page, bottom of the paragraph. I have 18:36:12
8 a very -- a couple of very specific questions. 18:36:17
9 Okay? 18:36:19
10 A. That paragraph begins with the word "But." 18:36:19
11 Q. Correct. 18:36:21
12 A. My analysis means that it's, therefore, 18:36:23
13 contrasting what's said there with something that's 18:36:27
14 gone before, and I think I do need the context. 18:36:29
15 MS. ESKENAZI: If -- if you can't answer 18:36:33
16 the question without reading the document, you'll 18:36:34
17 just tell Mr. Petrocelli you can't answer his 18:36:36
18 question. He may -- he may have no questions other 18:36:38
19 than, "Do you -- do you read these words on the 18:36:41
20 page?" So let him ask his question. If you can't 18:36:43
21 answer it, you'll tell him. 18:36:46
22 THE WITNESS: At this point I'm going to 18:36:48
23 read that paragraph. 18:36:49
24 BY MR. PETROCELLI: 18:36:49
25 Q. Thank you. Appreciate it. 18:36:50

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1 A. I've read that paragraph. 18:37:21

2 Q. Okay. As part of your work for the 18:37:22

3 Tolkiens, has it been your experience that the 18:37:29

4 family, and Christopher in particular, has been 18:37:32

5 opposed to widespread exploitation of the rights? 18:37:35

6 MS. ESKENAZI: Objection. Calls for 18:37:41

7 attorney-client privileged information. 18:37:43

8 If you can answer that question without 18:37:44

9 reference to what -- to communications you've had 18:37:46

10 with Christopher, Mr. Petrocelli is entitled to an 18:37:48

11 answer. But if you -- if the only way you would 18:37:52

12 know that answer is by communications with 18:37:54

13 Mr. Tolkien, I'm instructing you not to answer. 18:37:57

14 THE WITNESS: The only way I would know the 18:38:01

15 answer to that question was through communications 18:38:03

16 with Mr. Tolkien. 18:38:08

17 BY MR. PETROCELLI: 18:38:08

18 Q. Well, this article says: 18:38:09

19 "Christopher is powerless against 18:38:12

20 the big screen adaptation and the 18:38:14

21 merchandising, so the Estate fights 18:38:17

22 back through access to the archives, 18:38:18

23 granting of reprint rights and court 18:38:21

24 battles over copyright infringement." 18:38:23

25 Were you -- did you ever contact this 18:38:25

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1 author to indicate that his statements about 18:38:28
2 Mr. Tolkien were false? 18:38:30
3 A. I don't recall. 18:38:35
4 Q. Have you ever contacted or written to a 18:38:38
5 newspaper reporter to correct statements made that 18:38:43
6 were attributed to or that were about Mr. Tolkien, 18:38:46
7 Christopher Tolkien, that is? 18:38:49
8 A. I may have done, but I can't -- I can't 18:38:52
9 recall. 18:38:53
10 Q. Do you have a recollection of doing so in 18:38:54
11 this situation? 18:38:57
12 A. No, I don't have a recollection of doing 18:38:57
13 so. 18:38:58
14 Q. Okay. Let me ask you about the next 18:39:07
15 document, Exhibit 22. 18:39:09
16 Is it fair to say, before you look at 18:39:28
17 Exhibit 22, that as part of your work for the 18:39:30
18 Estate, that based on your knowledge of 18:39:34
19 Christopher's Tolkien's views, even those that he 18:39:38
20 publicly stated, that he was opposed to massive 18:39:41
21 widespread exploitation of the rights to his 18:39:46
22 father's books? 18:39:49
23 MS. ESKENAZI: I'm going to instruct not to 18:39:50
24 answer to the extent that you gained that knowledge 18:39:52
25 through conversations with Christopher. 18:39:55

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1 THE WITNESS: So please may I just have 18:39:58
2 it -- 18:40:13
3 MR. PETROCELLI: Yeah, please just repeat 18:40:13
4 the question again. 18:40:13
5 (The reporter read the record 18:40:13
6 as follows: 18:40:13
7 "QUESTION: Is it fair to 18:39:28
8 say, before you look at Exhibit 18:39:29
9 22, that as part of your work for 18:39:30
10 the Estate, that based on your 18:39:34
11 knowledge of Christopher's 18:39:37
12 Tolkien's views, even those that 18:39:39
13 he publicly stated, that he was 18:39:41
14 opposed to massive widespread 18:39:43
15 exploitation of the rights to his 18:39:47
16 father's books?") 18:39:49
17 MS. ESKENAZI: Again, I'm going to remind 18:40:14
18 you not to respond -- not to disclose 18:40:16
19 attorney-client communications. 18:40:19
20 THE WITNESS: If I were to answer your 18:40:22
21 question, I would be disclosing attorney-client 18:40:24
22 communications. 18:40:27
23 BY MR. PETROCELLI: 18:40:27
24 Q. Is it -- is it your testimony that -- well, 18:40:28
25 let me ask you, did the views of Christopher Tolkien 18:40:31

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1 about -- the views that he had about protecting his 18:40:34
2 father's works, including The Hobbit and Lord of the 18:40:39
3 Rings, influence you in any way in how you did your 18:40:42
4 job for the family? 18:40:47

5 MS. ESKENAZI: Objection. Calls for 18:40:50
6 attorney-client privileged information. I'm going 18:40:51
7 to instruct not to answer to the extent that the 18:40:56
8 question calls for divulging attorney-client 18:41:00
9 privileged communications. 18:41:03

10 THE WITNESS: Again, sorry. 18:41:03

11 (The reporter read the record 18:41:03
12 as follows: 18:41:03

13 "QUESTION: Is it your 18:40:28
14 testimony that -- well, let me ask 18:40:28
15 you, did the views of Christopher 18:40:32
16 Tolkien about -- the views that he 18:40:33
17 had about protecting his father's 18:40:37
18 works, including The Hobbit and 18:40:40
19 Lord of the Rings, influence you 18:40:41
20 in any way in how you did your job 18:40:44
21 for the family?") 18:40:47

22 THE WITNESS: I can't answer that without 18:41:19
23 re- -- revealing communications with my client. 18:41:22

24 BY MR. PETROCELLI: 18:41:22

25 Q. Well, we'll -- we disagree. But there's no 18:41:25

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1 judge here. 18:41:31

2 Do you have Exhibit 22 in front of you? 18:41:37

3 (The document referred to was 18:41:46

4 marked for identification as 18:41:46

5 Exhibit 22 and attached to this 18:41:46

6 deposition.) 18:41:47

7 THE WITNESS: Thank you. 18:41:47

8 BY MR. PETROCELLI: 18:41:47

9 Q. I've placed in front of you an article in 18:41:50

10 Le Monde dated on or about December 5, 2012 18:41:52

11 saying -- entitled, "My Father's Eviscerated Work: 18:41:56

12 Son of Hobbit Scribe J.R.R. Tolkien Finally Speaks 18:41:59

13 Out." 18:42:03

14 A. That's this document? 18:42:05

15 Q. That's this document. You've seen this 18:42:07

16 document before? This is an English translation of 18:42:10

17 a -- what might have been an article that appeared 18:42:14

18 initially in French. You said it was a French 18:42:18

19 magazine, Le Monde? 18:42:21

20 A. The French -- Le Monde is a French 18:42:22

21 newspaper. 18:42:25

22 Q. Newspaper. Excuse me. 18:42:25

23 Is this the article that you mentioned 18:42:25

24 previously in your testimony? 18:42:26

25 A. You asked me whether this was a document I 18:42:27

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1 had seen before. I don't think I've seen this 18:42:28
2 article in this form. 18:42:31
3 Q. Is this the article that you had in mind in 18:42:36
4 your testimony? 18:42:39
5 A. Yes, it was. 18:42:39
6 Q. Okay. 18:42:40
7 A. Yes, it is. 18:42:40
8 Q. When you read it, did you read it in 18:42:41
9 English? 18:42:42
10 A. I read it in French. 18:42:42
11 Q. And you're fluent in French? 18:42:46
12 A. No. 18:42:49
13 Q. But you're able to read an article of this 18:42:50
14 type in French? 18:42:52
15 A. Yes. 18:42:52
16 Q. Okay. And you don't consider that fluency? 18:42:53
17 A. No. 18:42:56
18 Q. Okay. Anyway, you'll see in here, the 18:42:57
19 second-to-last page -- 18:43:02
20 MS. ESKENAZI: Sorry, where are you? It's 18:43:02
21 not Bates numbered. 18:43:11
22 THE WITNESS: Are you in the article, these 18:43:12
23 are the comments -- 18:43:14
24 BY MR. PETROCELLI: 18:43:14
25 Q. I'm in the article. I'm in the article and 18:43:15

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1 they're right above the heading "Action Movies." 18:43:16

2 A. Okay. 18:43:19

3 Q. It says, "'We are in the back seat,'" end 18:43:20

4 of quotes, "Cathleen Blackburn comments." 18:43:22

5 A. Yes. 18:43:24

6 MS. ESKENAZI: I just want to -- 18:43:25

7 BY MR. PETROCELLI: 18:43:26

8 Q. Do you see that reference? 18:43:27

9 MS. ESKENAZI: I just want to say for the 18:43:27

10 record that this is not Bates numbered also. 18:43:28

11 BY MR. PETROCELLI: 18:43:28

12 Q. Do you see that reference? 18:43:32

13 A. Yes, I see that. 18:43:33

14 Q. And this is the reporter that you spoke to 18:43:34

15 that you said misquoted you, Raphaele, 18:43:37

16 R-e-r-o-l-l-e? 18:43:44

17 A. She's the reporter. 18:43:45

18 Q. Yeah. Is that the person that you spoke 18:43:48

19 to? 18:43:49

20 A. Yes, it is. 18:43:49

21 Q. Okay. Was that a telephone interview? 18:43:50

22 A. Yes, it was. 18:43:52

23 Q. Okay. Why did you agree to do it? 18:43:54

24 A. I was asked by my clients to do it. 18:43:55

25 Q. Who asked you? 18:43:58

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1 A. Mr. Tolkien. 18:43:59

2 Q. Which one? 18:44:02

3 A. Sorry. Christopher Tolkien. 18:44:02

4 Q. Okay. And you were aware that he 18:44:09

5 participated in this interview as well? 18:44:13

6 MS. ESKENAZI: Objection to the extent it 18:44:17

7 calls for an attorney-client privileged 18:44:18

8 communication. 18:44:19

9 BY MR. PETROCELLI: 18:44:19

10 Q. I mean, you would know that from talking to 18:44:19

11 the reporter. 18:44:22

12 Come on, Bonnie. It's silly, but that's 18:44:22

13 all right. Go ahead. Instruct her not to answer. 18:44:25

14 MS. ESKENAZI: I'm not going to instruct 18:44:26

15 her not to answer. I'm going to say to her, if you 18:44:28

16 would let me finish, Dan, that to the extent you got 18:44:31

17 that information only from your client, you're 18:44:34

18 instructed not to answer. 18:44:36

19 MR. PETROCELLI: That's not privileged, 18:44:37

20 either, but -- even if she did. 18:44:39

21 THE WITNESS: When I spoke to the 18:44:40

22 journalist, I knew that the journalist had already 18:44:41

23 spoken to Mr. Tolkien. 18:44:45

24 BY MR. PETROCELLI: 18:44:45

25 Q. Okay. So did -- you stated, "We're in the 18:44:48

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1 back seat"? 18:44:51

2 A. Well, this is an English translation of 18:44:52

3 what appeared in French. The inter- -- interview 18:44:55

4 was conducted in French. 18:44:59

5 Q. And so did you say, "We're in the back 18:45:01

6 seat" in French? 18:45:03

7 A. No, I don't believe I did. 18:45:04

8 Q. And you deny saying that? 18:45:05

9 MS. ESKENAZI: Objection. Asked and 18:45:09

10 answered. 18:45:09

11 Answer again. 18:45:10

12 BY MR. PETROCELLI: 18:45:10

13 Q. Do you deny saying in French, "We're in the 18:45:16

14 back seat"? 18:45:18

15 A. I don't know exactly what I said in French. 18:45:18

16 Q. But whatever you said, you didn't say that. 18:45:24

17 Is that what -- is that your testimony? 18:45:26

18 MS. ESKENAZI: It's been asked and 18:45:27

19 answered. 18:45:28

20 You can answer it yet again. 18:45:28

21 THE WITNESS: I don't recall what I said in 18:45:30

22 French. 18:45:32

23 BY MR. PETROCELLI: 18:45:32

24 Q. Okay. Is that the statement that you 18:45:33

25 earlier said you thought you had been misquoted? 18:45:35

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1 A. I felt that all the bit in this paragraph 18:45:37
2 was -- was misquoting and misleading. The -- the 18:45:41
3 way in which these elements were put together were 18:45:48
4 misleading. 18:45:50

5 Q. "We were able to prove that nothing in the 18:45:51
6 original contract dealt with that sort of 18:45:52
7 exploitation," referring to slot machines. 18:45:54

8 Do you see that? 18:45:57

9 A. Yes. 18:45:57

10 Q. And did you make that statement to the 18:45:59
11 reporter in French? 18:46:02

12 A. No. 18:46:03

13 Q. You see -- and again, you didn't ask for a 18:46:07
14 retraction or a correction; is that right? 18:46:11

15 A. No, I didn't. 18:46:12

16 Q. Okay. Now, did Mr. -- Christopher Tolkien 18:46:15
17 instruct you to ask for a correction or a retraction 18:46:22
18 of any of the statements attributed to him? 18:46:25

19 MS. ESKENAZI: Objection. Attorney-client 18:46:29
20 privilege. Instruct not to answer. 18:46:30

21 MR. PETROCELLI: It's -- it's not 18:46:31
22 privileged. It's an instruction that she should 18:46:32
23 tell a reporter something. 18:46:34

24 MS. ESKENAZI: To the extent that was 18:46:39
25 communicated and you communicated something to the 18:46:40

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1 reporter, that is not privileged. 18:46:42

2 THE WITNESS: Perhaps I can answer the 18:46:46

3 question by saying, I did not go back to the 18:46:47

4 reporter in relation to this article. Does that 18:46:50

5 answer the question? 18:46:55

6 BY MR. PETROCELLI: 18:46:55

7 Q. Either with respect to comments attributed 18:46:56

8 to you or to Mr. Tolkien; is that correct? 18:46:58

9 A. I didn't go back to them at all. 18:46:59

10 Q. Okay. Were the comments attributed -- 18:47:02

11 attributed to Mr. Tolkien consistent with your 18:47:03

12 knowledge and understanding with his views over the 18:47:08

13 years? 18:47:11

14 MS. ESKENAZI: Objection. Calls for -- to 18:47:12

15 the extent it calls for attorney-client privileged 18:47:15

16 information, you're instructed not to answer. If 18:47:18

17 you can answer the question without divulging 18:47:21

18 attorney-client communications -- 18:47:23

19 THE WITNESS: I can't -- I can't answer 18:47:26

20 that question without divulging what my client has 18:47:27

21 said to me. 18:47:30

22 BY MR. PETROCELLI: 18:47:30

23 Q. Is every -- every single one of your 18:47:31

24 conversations with Mr. Tolkien you think is covered 18:47:33

25 by the attorney-client privilege? How long have you 18:47:35

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1 known him? 18:47:39

2 A. Which question would you like me to answer? 18:47:41

3 Q. The second one. 18:47:43

4 A. Okay. I've known Mr. Tolkien since I 18:47:44

5 became involved in Tolkien work in the '90s. 18:47:46

6 Q. So -- well, you became involved in the work 18:47:48

7 earlier than that, did you not? 18:47:51

8 A. I joined the firm in 1989, and I began 18:47:53

9 doing some work for the Tolkien Estate in 1990. 18:47:58

10 Q. Do you have any -- any decision-making 18:48:01

11 power, without having to consult any of the family 18:48:08

12 members, to make decisions about these contracts? 18:48:12

13 MS. ESKENAZI: Objection. Attorney-client 18:48:18

14 privileged information. 18:48:20

15 To the extent -- to the extent -- to the 18:48:21

16 extent you have an understanding of what your 18:48:27

17 decision-making power is, only through conversations 18:48:29

18 that you've had with your clients, that is 18:48:33

19 privileged information and you're not to divulge 18:48:36

20 what your clients told you about what you can and 18:48:40

21 cannot do. 18:48:42

22 THE WITNESS: I therefore can't answer the 18:48:43

23 question because anything I do derives from the 18:48:44

24 instructions I've had from my clients. 18:48:47

25 BY MR. PETROCELLI: 18:48:47

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1 Q. Are they in writing, your instructions? 18:48:49
2 A. At some times. 18:48:51
3 Q. Do you have a written retainer agreement? 18:48:52
4 A. There's a client engagement letter. 18:48:55
5 Q. It's in writing? 18:48:57
6 A. Yes. 18:48:58
7 Q. Does it cover all the work that you've done 18:48:58
8 for the Tolkiens since 1992? 18:49:00
9 MS. ESKENAZI: Objection. It's vague and 18:49:03
10 ambiguous. 18:49:04
11 THE WITNESS: There's a client engagement 18:49:04
12 letter beginning -- from -- entered into in the 18:49:08
13 beginning of 2012. 18:49:13
14 BY MR. PETROCELLI: 18:49:14
15 Q. And before then? 18:49:14
16 A. I don't believe there was a written 18:49:15
17 engagement letter. 18:49:16
18 Q. Have you ever received any -- any gifts 18:49:17
19 from any members of the Tolkien family? 18:49:25
20 A. Yes, I have. 18:49:30
21 Q. Any -- any substantial gifts? 18:49:31
22 A. Substantial in value? 18:49:35
23 Q. Yes. 18:49:39
24 A. No. 18:49:39
25 Q. Just small gifts of appreciation? 18:49:39

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1 A. Flowers.

18:49:42

2 (Pages 356 through 359 are
3 marked confidential and are bound
4 under separate cover. The
5 nonconfidential portion of this
6 transcript continues on page 360.)

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1 Q. Is all of the financial benefit that you 18:52:47
2 have gained over the years as a result of your 18:52:51
3 relationship with the Tolkiens derived solely from 18:52:55
4 the practice of law? 18:52:57

5 A. Yes. 18:52:58

6 Q. Okay. Have you been engaged in any 18:53:00
7 business ventures with them? 18:53:02

8 A. No. 18:53:06

9 Q. With any members of the family? 18:53:06

10 A. No. 18:53:08

11 Q. Have you ever calculated how much money you 18:53:13
12 have derived over the years as a result of your 18:53:16
13 relationship with the Tolkiens? 18:53:20

14 A. Well, I've derived my drawings from my 18:53:22
15 firms, the firms for which I've worked. Some of 18:53:26
16 that comes from work done for the Tolkien Estate. 18:53:28

17 Q. Well, the Tolkiens have been your -- really 18:53:32
18 your only client over the years, right? 18:53:36

19 A. That's not correct. 18:53:38

20 Q. Well, their biggest client, right? 18:53:40

21 A. Probably my biggest client. 18:53:42

22 Q. Yeah. 18:53:43

23 A. Since -- since I -- since I became involved 18:53:43
24 with their work in -- from 1992 onwards. But that 18:53:47
25 work wasn't always on the same scale as at present. 18:53:52

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1 So I can't be specific as to whether they were 18:53:56
2 always our biggest client. 18:54:00
3 Q. How often -- was there a meeting with the 18:54:02
4 Tolkiens about the decision to file this lawsuit? 18:54:05
5 A. There wasn't a meeting with all of the 18:54:10
6 directors together and the trustees together. 18:54:14
7 Q. There was not? 18:54:16
8 A. No. 18:54:16
9 Q. Well, then, did you call for a vote somehow 18:54:17
10 of the various trustees of the two entities that 18:54:20
11 sued? 18:54:22
12 THE WITNESS: Am I able to -- 18:54:25
13 MS. ESKENAZI: Well, again, to the extent 18:54:27
14 that Mr. Petrocelli will agree that this is not a 18:54:30
15 waiver of the attorney-client privilege, I will -- I 18:54:35
16 will allow you to answer that. 18:54:38
17 MR. PETROCELLI: For you, I will agree. 18:54:39
18 MS. ESKENAZI: Yes or no? Did you call for 18:54:41
19 a vote? It's a "yes" or "no" answer. 18:54:44
20 THE WITNESS: Well, we consult- -- 18:54:45
21 consulted with these clients and they were ad item 18:54:47
22 so there was no need for a vote. They all agreed. 18:54:51
23 The decision was unanimous. 18:54:54
24 BY MR. PETROCELLI: 18:54:56
25 Q. You consulted on a -- on a one-by-one 18:54:56

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1 basis? 18:55:01

2 A. No, I wrote to them collectively. 18:55:01

3 Q. When is the first time that you conveyed to 18:55:03

4 your clients that you thought that Warner Bros. or 18:55:07

5 Zaentz was in breach of the agreement? 18:55:12

6 MS. ESKENAZI: Objection. Calls for 18:55:16

7 attorney-client privilege information. Instruct not 18:55:18

8 to answer. 18:55:20

9 MR. PETROCELLI: When? When I asked. 18:55:21

10 MS. ESKENAZI: When is the first time you 18:55:23

11 conveyed to your clients? 18:55:25

12 MR. PETROCELLI: Right. 18:55:26

13 Q. When is the first time you had a discussion 18:55:26

14 with your clients or any one of them about either 18:55:29

15 Zaentz or Warner Bros. being in breach of the 18:55:35

16 agreement? 18:55:37

17 MS. ESKENAZI: Objection. Attorney-client 18:55:41

18 privileged communication. 18:55:43

19 THE WITNESS: I'm really sorry. I can't -- 18:55:47

20 MS. ESKENAZI: Instruct not to answer. 18:55:48

21 THE WITNESS: Okay. 18:55:50

22 BY MR. PETROCELLI: 18:55:50

23 Q. Okay. When is the first -- have you ever 18:55:57

24 told your clients over the years of your view, your 18:55:59

25 personal view, about the meaning of the agreement -- 18:56:04

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1 MS. ESKENAZI: Objection. 18:56:08

2 BY MR. PETROCELLI: 18:56:08

3 Q. -- that a physical product or physical disc 18:56:09

4 or cartridge is required in order for Zaentz and 18:56:13

5 Warners to have rights to do video games? Have you 18:56:17

6 ever shared that view with them? 18:56:22

7 MS. ESKENAZI: Objection. Attorney-client 18:56:23

8 privileged information. I think instruct not to 18:56:25

9 answer. 18:56:28

10 BY MR. PETROCELLI: 18:56:28

11 Q. Have you ever put that personal viewpoint 18:56:28

12 of yours into a document? 18:56:30

13 MS. ESKENAZI: Object -- 18:56:33

14 BY MR. PETROCELLI: 18:56:33

15 Q. Have you ever recorded in a document, 18:56:35

16 written in a document, your -- your view that the 18:56:36

17 merchandising agreement requires a disc or a 18:56:42

18 cartridge for a computer game or a video game? 18:56:45

19 A. I put it in -- I put it in -- in documents 18:56:51

20 addressed to the Saul Zaentz Company. 18:56:56

21 Q. What document did -- oh, this is after the 18:57:00

22 event in September 2010 -- 18:57:02

23 A. No -- 18:57:02

24 Q. -- around that period of time? 18:57:03

25 A. -- it's implicit in the discussions we were 18:57:04

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1 having in 1993 and thereafter. 18:57:07

2 Q. Well, I'm not asking about implicit because 18:57:09

3 what you think is implicit doesn't matter. I'm 18:57:11

4 asking what words are written on a piece of paper. 18:57:14

5 And I'm simply trying to find out, other than the 18:57:16

6 correspondence that exists in 2010 that led to 18:57:19

7 mediation and then to the filing of this lawsuit, 18:57:23

8 okay, I'm trying to find out that -- whether you 18:57:25

9 ever put in writing, prior to 2010, your view about 18:57:29

10 the meaning of the contract, that it required a 18:57:36

11 physical disc or cartridge? 18:57:37

12 A. Yes, I did. I may not have used those 18:57:38

13 precise words, but I have addressed that matter in 18:57:40

14 correspondence -- 18:57:43

15 Q. Can you point -- 18:57:43

16 A. -- before 2010. 18:57:44

17 Q. Can you point to a document in which you 18:57:46

18 have done so? 18:57:49

19 A. We looked at one this morning. 18:57:49

20 Q. Which? 18:57:50

21 A. Which was setting out my review of the 18:57:51

22 computer games licensing question in -- in this 18:57:57

23 early part of the 1990s. 18:58:00

24 Q. In the text versus graphic context? 18:58:01

25 A. Yes. 18:58:03

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1 Q. Okay. And is it your testimony that that 18:58:04
2 document specifically discusses the issue that a 18:58:07
3 game that is solely downloadable is not covered but 18:58:10
4 that a game to be covered has to have the contents 18:58:14
5 of the game on a disc or cartridge? 18:58:18
6 MS. ESKENAZI: Objection. Compound. 18:58:21
7 BY MR. PETROCELLI: 18:58:21
8 Q. Is that your testimony? 18:58:25
9 MS. ESKENAZI: Objection. Vague and 18:58:25
10 ambiguous. Compound. 18:58:26
11 THE WITNESS: Can I have the question 18:58:42
12 again? 18:58:43
13 (The reporter read the record 18:58:43
14 as follows: 18:58:43
15 "QUESTION: And is it your 18:58:04
16 testimony that that document 18:58:06
17 specifically discusses the issue 18:58:07
18 that a game that is solely 18:58:09
19 downloadable is not covered but 18:58:12
20 that a game to be covered has to 18:58:14
21 have the contents of the game on a 18:58:17
22 disc or cartridge?") 18:58:19
23 THE WITNESS: That document does refer to 18:58:43
24 that proposition. 18:58:49
25 BY MR. PETROCELLI: 18:58:49

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1 Q. Can you -- can you show me, please? Do you 18:58:50
2 have it in front of you? 18:58:52
3 A. Do you have the number of the exhibit? 18:58:53
4 Q. You have it right -- you have the exhibits 18:58:55
5 there. You can just -- you only have a handful. 18:58:58
6 You can just point to it and show me where those 18:58:59
7 words are written. 18:59:02
8 John, can you assist? 18:59:06
9 MR. ULIN: I'm trying. 18:59:06
10 MR. PETROCELLI: She only has 14 or 15 18:59:11
11 documents to choose from. 18:59:12
12 THE WITNESS: I've got it anyway. It's 18:59:13
13 Exhibit -- it's Exhibit 5. 18:59:15
14 BY MR. PETROCELLI: 18:59:15
15 Q. Okay. Exhibit 5 is Plaintiffs' Bates 18:59:24
16 number S029253, a letter dated November 2, 1993. 18:59:27
17 And show me where those words appear. 18:59:33
18 A. In the third paragraph of this letter, 18:59:36
19 first two sentences, I incorporate by reference the 18:59:43
20 discussion of this point that took place in 1994. 18:59:47
21 Q. And that's your -- 18:59:51
22 MS. ESKENAZI: You mean 1984? 18:59:54
23 THE WITNESS: 1984. So sorry. 18:59:55
24 BY MR. PETROCELLI: 18:59:55
25 Q. And is it your -- and so there's nothing in 18:59:57

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1 this letter, Exhibit 5, that actually discusses the 19:00:00
2 contents of the game having to be on a physical 19:00:05
3 storage device like a disc or a cartridge, correct? 19:00:08
4 MS. ESKENAZI: Objection. Misstates the 19:00:12
5 testimony. Misstates the document. 19:00:13
6 THE WITNESS: The -- the letter 19:00:15
7 incorporates by reference those other documents. 19:00:17
8 BY MR. PETROCELLI: 19:00:17
9 Q. But those other documents don't contain any 19:00:20
10 specific reference to computer games having to have 19:00:22
11 the contents of the game on a -- on disc or 19:00:27
12 cartridge, correct? 19:00:31
13 A. They may not use the words "disc" or 19:00:31
14 "cartridge." But they require the game to be an 19:00:33
15 item of -- article of tangible personal property. 19:00:36
16 Q. But -- but -- but beyond reciting the words 19:00:39
17 of the agreement, they don't go on -- the 19:00:41
18 February 1984 document doesn't go on to, for 19:00:44
19 example, say, a game that's only downloadable and 19:00:47
20 not available for purchase on a disc or a cartridge 19:00:51
21 would not qualify? There's nothing in that letter 19:00:53
22 to that effect in 1984. Would you agree with me? 19:00:56
23 A. I haven't -- I haven't reviewed those -- 19:01:00
24 MS. ESKENAZI: Hold on a second. I'm going 19:01:02
25 to object. It misstates the document. Misstates 19:01:04

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1 the testimony. It is argumentative. It is vague 19:01:08
2 and ambiguous. It's compound. 19:01:10
3 BY MR. PETROCELLI: 19:01:10
4 Q. Okay. And would you agree with me that you 19:01:14
5 didn't have that specific discussion? That specific 19:01:15
6 discussion doesn't appear in the '84 document? 19:01:18
7 A. Do you want me to ask this question that 19:01:22
8 you're asking now or the previous one? 19:01:26
9 Q. Why are you asking me? 19:01:27
10 A. Because I'm not sure whether these two -- 19:01:28
11 I'm not quite sure which question it is I'm asked to 19:01:31
12 answer. 19:01:34
13 Q. Okay. 19:01:34
14 A. And it seemed to me that you put the 19:01:34
15 question -- the subject matter in two different 19:01:36
16 forms. 19:01:40
17 Q. I don't need to ask you. You've already 19:01:40
18 answered the question about the Exhibit 5, okay? 19:01:42
19 And then you are suggesting now that a more specific 19:01:45
20 discussion of this very issue appears in a letter 19:01:49
21 dated February 9, 1984, which is eight years before 19:01:53
22 your involvement. 19:01:59
23 Would you like to see that letter? Would 19:02:01
24 you like to see the February 9, '84 letter? 19:02:06
25 A. I don't -- I don't believe I need to. 19:02:10

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1 Q. Okay. Why is that? You don't need to 19:02:13
2 because you remember what it says? 19:02:17
3 A. No, I was going to say, I don't 19:02:18
4 specifically recall what it says. 19:02:20
5 Q. Okay. When is the last time you saw the 19:02:21
6 February 9, 1984 letter? 19:02:25
7 A. I don't recall. 19:02:26
8 Q. Okay. And would you agree with me that in 19:02:27
9 1984, it's unlikely that there was any discussion 19:02:28
10 about downloadable computer programs? 19:02:32
11 A. Yes, I would. 19:02:34
12 Q. Okay. And that -- and that -- you would 19:02:35
13 not have written anything in February 9, 1984, 19:02:38
14 either, correct? 19:02:41
15 A. Written anything -- 19:02:43
16 MS. ESKENAZI: Objection. Vague and 19:02:43
17 ambiguous. 19:02:43
18 BY MR. PETROCELLI: 19:02:43
19 Q. Regarding this matter? 19:02:44
20 A. What matter? 19:02:46
21 Q. This case. The issues in this case. 19:02:46
22 A. This case hadn't happened then. I couldn't 19:02:50
23 have dealt with the issues in this case if the case 19:02:53
24 hadn't happened. One could only deal with the 19:02:55
25 matters in front of one. So I was dealing with 19:03:00

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1 the -- the matter of computer games as it presented 19:03:03
2 itself to the parties in -- in -- in 1993. 19:03:06
3 Q. So -- so, we got on -- 19:03:12
4 THE REPORTER: "1993," did you say? 19:03:12
5 THE WITNESS: 1993. 19:03:12
6 BY MR. PETROCELLI: 19:03:12
7 Q. So is it correct then that you never put 19:03:13
8 into a document, ever, you, yourself, wrote into a 19:03:17
9 letter or a memo this interpretation you have of the 19:03:23
10 merchandising agreement that online rights, video 19:03:28
11 rights, computer game rights, require a disc or a 19:03:31
12 cartridge or other similar device to store the 19:03:36
13 contents of the game that can be purchased? You've 19:03:38
14 never actually written that down any place, correct? 19:03:41
15 MS. ESKENAZI: Objection. Vague and 19:03:43
16 ambiguous. Compound. It's been asked and answered. 19:03:45
17 You can answer again. 19:03:48
18 THE WITNESS: Can you just give me the 19:04:05
19 beginning of the -- 19:04:06
20 (The reporter read the record 19:04:06
21 as follows: 19:04:06
22 "QUESTION: So is it correct 19:03:13
23 then that you never put into a 19:03:15
24 document, ever, you, yourself, 19:03:17
25 wrote into a letter or a memo this 19:03:22

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1 interpretation you have of the 19:03:27
2 merchandising agreement that 19:03:28
3 online rights, video rights, 19:03:30
4 computer game rights, require a 19:03:32
5 disc or cartridge or") -- 19:03:36
6 THE REPORTER: Do you want me to go on? 19:03:36
7 THE WITNESS: No, it's -- it's fine. 19:04:06
8 It is -- you asked, "is it correct that." 19:04:09
9 It is not correct that to this extent that I don't 19:04:18
10 recall. 19:04:18
11 BY MR. PETROCELLI: 19:04:20
12 Q. You can't identify any section? 19:04:20
13 A. I can't -- I can't -- 19:04:22
14 MS. ESKENAZI: It misstates the testimony 19:04:23
15 of the witness. 19:04:24
16 MR. PETROCELLI: Excuse me, don't interrupt 19:04:25
17 your own witness. 19:04:26
18 MS. ESKENAZI: Misstates -- objection. 19:04:26
19 Well -- 19:04:28
20 BY MR. PETROCELLI: 19:04:28
21 Q. You -- you can't identify any such 19:04:30
22 document, correct? 19:04:31
23 MS. ESKENAZI: Objection. It misstates the 19:04:33
24 testimony. 19:04:34
25 THE WITNESS: I can't recall such a 19:04:35

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1 document. 19:04:38

2 BY MR. PETROCELLI: 19:04:38

3 Q. Okay. Okay. Before -- you recall that -- 19:04:39

4 MS. ESKENAZI: Oh, I'm sorry. Go ahead. 19:04:46

5 Ask your question. 19:04:48

6 MR. PETROCELLI: No, that's -- that's all 19:04:49

7 right. You're going to look at the time, right? 19:04:51

8 How much time do we have? 19:04:53

9 THE VIDEOGRAPHER: We've been on the record 19:04:55

10 seven hours, eight minutes. 19:05:02

11 MR. PETROCELLI: Okay. Well, look, we'll 19:05:04

12 adjourn now. I am not finished. As you can see, I 19:05:06

13 have a whole stack of documents that I have to go 19:05:13

14 through with you. If I can't work this out with 19:05:16

15 your very able counsel, then we will have to deal 19:05:18

16 with this in other ways. But for now, we'll 19:05:22

17 adjourn. 19:05:27

18 THE WITNESS: That sounds very threatening. 19:05:28

19 MR. PETROCELLI: Oh -- 19:05:30

20 MS. ESKENAZI: It was meant -- it was meant 19:05:30

21 to be threatening. 19:05:31

22 MR. PETROCELLI: Legal ways. Legal ways. 19:05:31

23 THE WITNESS: Good. 19:05:33

24 MR. PETROCELLI: Legal ways. 19:05:34

25 THE WITNESS: That's fine. That's fine. 19:05:35

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1 MR. ULIN: And as I stated this morning, 19:05:40
2 Mr. Petrocelli's position with respect to continuing 19:05:41
3 the deposition on further days is also my position 19:05:44
4 and the position of the Saul Zaentz Company. 19:05:47
5 THE VIDEOGRAPHER: We are off the record at 19:05:50
6 7:06 p.m. and this concludes today's testimony given 19:05:52
7 by Cathleen Blackburn. The total number of media 19:05:56
8 used was five and will be retained by Veritext Legal 19:06:00
9 Solutions. 19:06:03
10 (Brief recess.) 19:06:03
11 MR. PETROCELLI: The transcript will be -- 19:06:22
12 a copy of the transcript will be sent to -- to -- to 19:06:24
13 you, Bonnie. 19:06:27
14 MS. LENS: You want them to have a copy or 19:06:34
15 the original? 19:06:36
16 MR. PETROCELLI: Original. We get the 19:06:36
17 original. The copy will go to you. 19:06:37
18 MS. ESKENAZI: Usually the original -- 19:06:37
19 MR. PETROCELLI: No, the person taking the 19:06:39
20 deposition gets the original. 19:06:40
21 MS. ESKENAZI: No, but that's okay. I 19:06:42
22 don't care who gets the original in today's day. 19:06:42
23 MR. PETROCELLI: It doesn't matter. 19:06:45
24 THE WITNESS: Is the original going to be 19:06:46
25 different from the copy? 19:06:47

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1 MR. PETROCELLI: It is not. And they're 19:06:48
2 both going to be -- they're both going to be in 19:06:49
3 English, too. 19:06:50

4 THE WITNESS: That's a relief. 19:06:53

5 MR. PETROCELLI: Okay. In any event, the 19:06:53
6 witness can have, what, 30 days -- 19:06:56

7 MS. ESKENAZI: 30 days. Fine. 19:07:00

8 MR. PETROCELLI: -- to review it and let us 19:07:02
9 know if there are any changes or corrections. 19:07:04
10 Admonishing you, of course, if you do make any 19:07:07
11 corrections to the transcript, that it can bear on 19:07:09
12 your credibility. 19:07:11

13 If we don't get word of any changes, the 19:07:12
14 transcript can be used in the form transcribed and 19:07:15
15 the court reporter is otherwise relieved of her 19:07:17
16 duties under the rules. So stipulated? 19:07:20

17 MS. ESKENAZI: So stipulated. 19:07:24

18 MR. ULIN: So stipulated. 19:07:26

19 (Deposition concluded at 7:07 p.m.)

20 -oOo-

21

22

23

24

25

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DECLARATION

I hereby declare I am the deponent in the within matter; that I have read the foregoing deposition and know the contents thereof, and I declare that the same is true of my knowledge except as to the matters which are therein stated upon my information or belief, and as to those matters, I believe it to be true.

I declare under the penalties of perjury of the State of California that the foregoing is true and correct.

Executed on the _____ day of _____ 2014, at _____, California.

CATHLEEN BLACKBURN

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1 STATE OF CALIFORNIA)
) ss.
2 COUNTY OF LOS ANGELES)
3

4 I, Shanda Gabriel, Certified Shorthand
5 Reporter, Certificate No. 10094, for the State of
6 California, hereby certify:

7 I am the deposition officer that
8 stenographically recorded the testimony in the
9 foregoing deposition;

10 Prior to being examined the witness was by
11 me first duly sworn;

12 The foregoing transcript is a true record
13 of the testimony given.

14 Before completion of the deposition,
15 review of the transcript [X] was [] was not
16 requested. If requested, any changes made by the
17 deponent (and provided to the reporter) during the
18 period allowed are appended hereto.

19

20 Dated 1/10/14

21

22



Shanda Gabriel

CSR 10094

23

24

25

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EXHIBIT B

THIS EXHIBIT HAS BEEN
DESIGNATED
CONFIDENTIAL
AND IS FILED
SEPARATELY UNDER SEAL
PURSUANT TO
PROTECTIVE ORDER

EXHIBIT C

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

FOURTH AGE LTD., et al.,)
Plaintiffs,)
vs.) No. 12-9912-ABC
WARNER BROS. DIGITAL) (SHx)
DISTRIBUTION, et al.,)
Defendants.)
_____)
WARNER BROS. DIGITAL)
DISTRUBUTION INC., et al.,)
Counterclaim)
Plaintiffs,)
vs.)
FOURTH AGE LTD., et al.,)
Counterclaim)
Defendants.)
_____)

VIDEOTAPED DEPOSITION OF STEVEN ANDREW MAIER

Los Angeles, California

Friday, December 13, 2013

Reported by: SHANDA GABRIEL, CSR No. 10094
JOB No. 1779931

PAGES 1-393

CONFIDENTIAL PAGES BOUND UNDER SEPARATE COVER:

25-29; 78-91; 164-174; 204-206; 292-293; 299-306

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

FOURTH AGE LTD., et al.,)
Plaintiffs,)
vs.) No. 12-9912-ABC
WARNER BROS. DIGITAL) (SHx)
DISTRIBUTION, et al.,)
Defendants.)
_____)
WARNER BROS. DIGITAL)
DISTRUBUTION INC., et al.,)
Counterclaim)
Plaintiffs,)
vs.)
FOURTH AGE LTD., et al.,)
Counterclaim)
Defendants.)
_____)

Videotaped Deposition of STEVEN ANDREW
MAIER, taken on behalf of the Defendants and
Counterclaim Plaintiffs at 1999 Avenue of the Stars,
Los Angeles, California, commencing at 9:07 a.m.,
Friday, December 13, 2013, before SHANDA GABRIEL,
CSR No. 10094.

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20
21
22 ALSO PRESENT:

23 ROBYN MARTIN

24 JILL WARREN, VIDEOGRAPHER

I N D E X

WITNESS	EXAMINATION	PAGE
STEVEN ANDREW MAIER	BY MR. ULIN	12
	BY MR. PETROCELLI	183

E X H I B I T S

NUMBER	DESCRIPTION	PAGE
Exhibit 23	Steven Andrew Maier's Curriculum Vitae	22
Exhibit 24	E-mail Bates stamped CTRL00023304 through 06	64
Exhibit 25	E-mail Bates stamped SZC0001931 through 32	72
Exhibit 26	Document entitled "Note of Consultation with Richard Arnold QC at 11 South Square, Gray's INN on Thursday, 4th July 2002 at 4:30 p.m." Bates stamped SZC0060907 through 15 (BOUND WITH THE CONFIDENTIAL PORTION OF THIS TRANSCRIPT)	78

EXHIBITS (CONTINUED)

NUMBER	DESCRIPTION	PAGE
Exhibit 27	Document headed "Instructions to Leading Counsel to Advise in Consultation" Bates stamped SZC0060898 through 905 (BOUND WITH THE CONFIDENTIAL PORTION OF THIS TRANSCRIPT)	84
Exhibit 28	E-mail string with attachment Bates stamped SZC0036996 through 7001	92
Exhibit 29	E-mail string Bates stamped SZC0036992 through 995	99
Exhibit 30	E-mail string Bates stamped PLAINTIFFS008379 through 81	102
Exhibit 31	Letter dated April 30, 2004 to Cathleen Blackburn and Steven Maier from Carole F. Barrett, Bates stamped PLAINTIFFS017445 through 50	118
Exhibit 32	Letter dated 24th June 2004 to Annette Hurst from Steven A. Maier Bates stamped SZC0036673	123

EXHIBITS (CONTINUED)

NUMBER	DESCRIPTION	PAGE
Exhibit 33	E-mail with attachment Bates stamped PLAINTIFFS010970 through 74	125
Exhibit 34	Document dated August 31, 2005 entitled "The Lord of the Rings Online: Shadows of Angmar Proposal for Use of Tolkien Quotes" Bates stamped PLAINTIFFS007431 through 38	158
Exhibit 35	Tolkien Enterprises document entitled "Overview of Prominent Licensees, June 2007" Bates stamped SZC0033579 through 609	160
Exhibit 36	Letter dated July 23, 2004 to the Director of Licensing from Kevin T. Paradine, with enclosures, Bates stamped SZC0053049 through 53	314
Exhibit 37	E-mail string Bates stamped SZC0053047 through 48	318

EXHIBITS (CONTINUED)

NUMBER	DESCRIPTION	PAGE
Exhibit 38	E-mail Bates stamped SZC0055157	361
Exhibit 39	E-mail with attachment Bates stamped SZC0033457 through 60	374
Exhibit 40	Document entitled "Overview of Prominent Licensees June 2007" Bates stamped PLAINTIFFS004582 through 609	384

PREVIOUSLY MARKED EXHIBITS

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Exhibit 20	56

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Los Angeles, California

Friday, December 13, 2013

9:07 a.m.

08:21:48

09:04:29

THE VIDEOGRAPHER: Good morning. We are on 09:07:16

the record at 9:07 a.m. on December 13, 2013. This 09:07:31

is the video recorded deposition of Steven Maier. 09:07:37

My name is Jill Warren, here with our court 09:07:40

reporter, Shanda Gabriel. We are here from Veritext 09:07:48

Legal Solutions at the request of counsel for 09:07:50

defendants and counterclaim plaintiffs. 09:07:52

This deposition is being held at 1999 09:07:53

Avenue of the Stars, in Los Angeles, California. 09:07:56

The caption of this case is Fourth Age 09:07:59

Limited, et al., versus Warner Bros. Digital, et 09:08:02

al., and related counterclaim. Case number 09:08:06

12-9912-ABC (SHx) pending in the United States 09:08:14

District Court, Central District of California. 09:08:17

Please note that audio and video recording 09:08:19

will take place unless all parties agree to go off 09:08:23

the record. The microphones are sensitive and may 09:08:26

pick up whispers, private conversations and cellular 09:08:29

interference. 09:08:31

I'm not related to any party in this 09:08:31

action, nor am I financially interested in the 09:08:34

1 outcome in any way. 09:08:36

2 At this time, will counsel and all present 09:08:36

3 please identify themselves for the record. 09:08:40

4 MR. ULIN: My name is John Ulin from 09:08:43

5 Arnold & Porter for the Saul Zaentz Company. 09:08:45

6 MR. GLICK: Marty Glick, also from Arnold & 09:08:48

7 Porter and also for the Saul Zaentz Company. 09:08:51

8 MR. PETROCELLI: Daniel Petrocelli for the 09:08:54

9 Warner parties. 09:08:56

10 MR. PRIMACK: Nikolas Primack from 09:08:58

11 O'Melveny & Myers for the Warner parties. 09:08:58

12 MS. MARTIN: Robyn Martin from New Line 09:09:02

13 Cinema. 09:09:04

14 MS. MORIARTY: Elisabeth Moriarty, 09:09:04

15 Greenberg Glusker, on behalf of the plaintiffs and 09:09:06

16 the witness. 09:09:07

17 MS. ESKENAZI: Bonnie Eskenazi from 09:09:08

18 Greenberg Glusker on behalf of plaintiffs and the 09:09:12

19 witness. 09:09:13

20 THE WITNESS: Steven Maier. 09:09:14

21 MS. ESKENAZI: We also missed somebody in 09:09:17

22 the back. 09:09:19

23 MR. ULIN: Oh, I'm sorry. That's a good 09:09:19

24 point. 09:09:19

25 MS. MIYAMOTO: Lauren Miyamoto with Arnold 09:09:19

1 & Porter from the Saul Zaentz Company. 09:09:21

2 THE VIDEOGRAPHER: Thank you. The witness 09:09:22

3 will be sworn in and counsel may begin the 09:09:24

4 examination. 09:09:26

5 09:09:27

6 STEVEN ANDREW MAIER,
7 having been first duly sworn, was
8 examined and testified as follows:

9

10 EXAMINATION

11 BY MR. ULIN: 09:09:34

12 Q. Good morning, Mr. Maier. 09:09:35

13 A. Good morning. 09:09:36

14 Q. My name is John Ulin, we just met. I am 09:09:37
15 counsel for the Saul Zaentz Company. 09:09:41

16 Do you understand that? 09:09:42

17 A. I do. 09:09:46

18 Q. And we are defendants in a litigation 09:09:47
19 brought by the Tolkien Estate. 09:09:49

20 Do you understand that? 09:09:51

21 A. Tolkien Estate and HarperCollins. 09:09:53

22 Q. And HarperCollins, yes. 09:09:55

23 MR. PETROCELLI: Can the witness please 09:09:55
24 keep your voice up. I can't hear you. 09:09:57

25 THE WITNESS: Okay. 09:09:59

1 BY MR. ULIN: 09:09:59

2 Q. Thank you. 09:09:59

3 I want to start with a couple of -- a few 09:10:00

4 ground rules for the deposition today, just so we 09:10:02

5 both understand the procedures and are on the same 09:10:05

6 page. Okay? 09:10:07

7 A. Okay. 09:10:07

8 Q. You understand that you're under oath to 09:10:12

9 tell the truth here today as you would be if you 09:10:15

10 were testifying in a court of law, correct? 09:10:18

11 A. Yes. 09:10:20

12 Q. And you've done a good job so far, but 09:10:22

13 throughout the day when I ask questions you're going 09:10:25

14 to need to answer my questions verbally, that is 09:10:26

15 with words, instead of with a nod of the head or an 09:10:28

16 answer like "uh-huh," and that's because the 09:10:31

17 reporter needs to be able to take down everything we 09:10:32

18 say here today. 09:10:34

19 Do you understand that? 09:10:35

20 A. Yes, I do. 09:10:35

21 Q. And again, we started out well. We'll also 09:10:38

22 need to avoid talking over one another. That's for 09:10:40

23 the same reason, the reporter can only take down one 09:10:44

24 person's words at a time. 09:10:47

25 Do you understand that? 09:10:49

1 A. Yeah. 09:10:49

2 Q. You're represented by counsel here this 09:10:50

3 morning? 09:10:51

4 A. Yes. 09:10:51

5 Q. And that's Ms. Eskenazi and Ms. Moriarty? 09:10:51

6 A. That's correct. 09:10:53

7 Q. Briefly with respect to procedure, it's a 09:10:58

8 question-and-answer session. By and large I ask 09:11:00

9 questions and you answer. 09:11:03

10 Do you understand that? 09:11:04

11 A. Yes, I do. 09:11:04

12 Q. From time to time your counsel may object 09:11:05

13 to the form of a question that I ask, but typically 09:11:08

14 unless she instructs you not to answer, even if your 09:11:13

15 counsel objects, you still need to answer my 09:11:16

16 question. 09:11:17

17 Do you understand that? 09:11:17

18 A. Okay, yes. 09:11:18

19 Q. If at any time you don't hear or understand 09:11:22

20 one of my questions, we can have it read back by the 09:11:24

21 reporter or I can rephrase the question. 09:11:27

22 Do you understand that? 09:11:29

23 A. Yeah. 09:11:29

24 Q. And if you don't ask for a question to be 09:11:29

25 rephrased or repeated, I'm going to understand that 09:11:32

15

1 | you understood the question I'm asking. 09:11:35

2 Do you understand that? 09:11:36

3 | A. Yes. 09:11:36

4 Q. We can take a break at any time in the 09:11:41

5 | proceedings. Just let us know and we'll accommodate 09:11:42

6 | that. 09:11:47

7	Do you understand?	09:11:48
---	--------------------	----------

8	A. Yeah.	09:11:48
---	----------	----------

9 0. And then finally, at some point a few weeks 09:11:49

10	after the deposition is concluded, you're going to	09:11:52
----	--	----------

11	receive a booklet that contains the reporter's	09:11:54
----	--	----------

12	transcription of everything that was said here	09:11:57
----	--	----------

13	today.	09:11:58
----	--------	----------

14	Do you understand that?	09:11:58
----	-------------------------	----------

15	A. Yes.	09:11:58
----	---------	----------

16	Q. And you will have the opportunity when you	09:11:59
----	---	----------

17 receive that transcription to correct any errors you 09:12:01

18	perceive in what was transcribed.	09:12:05
----	-----------------------------------	----------

19	Do you understand that?	09:12:06
----	-------------------------	----------

20	A. Yes.	09:12:06
----	---------	----------

21 0. If you make corrections to the transcript, 09:12:07

22	I would and other counsel here would have the	09:12:09
----	---	----------

23	opportunity to comment on how your corrections	09:12:11
----	--	----------

24 affect the credibility of your testimony, whether it 09:12:15

25 | should be believed. 09:12:17

1 Do you understand that? 09:12:18

2 A. Okay, I understand. 09:12:19

3 Q. So it behooves you to give your best and 09:12:19

4 most complete testimony here today. 09:12:22

5 Do you understand? 09:12:24

6 A. Yes. 09:12:26

7 Q. Have you ever given testimony in court 09:12:26

8 before? 09:12:28

9 A. Yes, I have. 09:12:29

10 Q. On how many occasions? 09:12:29

11 A. On one occasion. 09:12:31

12 Q. And what was that? 09:12:32

13 A. That was a criminal trial in the United 09:12:33

14 Kingdom. 09:12:36

15 Q. Did it relate in any way to the Tolkien 09:12:37

16 Estate? 09:12:41

17 A. No. 09:12:41

18 Q. And when was the -- when did you give 09:12:42

19 testimony in that criminal trial? 09:12:44

20 A. To the best of my recollection, it was 09:12:45

21 around 1990. 09:12:48

22 Q. And was your testimony given as a lay 09:12:51

23 witness? I can ask the question differently. 09:12:59

24 Were you giving testimony as a lawyer or 09:13:04

25 were you giving testimony of your observations of 09:13:07

1 facts and events? 09:13:10

2 A. I don't really recall. I had been a 09:13:10

3 solicitor for a company that was in some way 09:13:13

4 involved in the criminal proceedings, but I don't 09:13:18

5 now recall the details sitting here today. 09:13:21

6 Q. Fair enough. Have you ever given testimony 09:13:23

7 at a deposition before? 09:13:25

8 A. No. 09:13:28

9 Q. Is there any reason why you cannot give 09:13:30

10 your best and most complete testimony here this 09:13:32

11 morning? 09:13:34

12 A. No. 09:13:34

13 Q. Are you suffering any illness that affects 09:13:35

14 your ability to testify today? 09:13:37

15 A. No. 09:13:38

16 Q. Have you drunk any alcohol within the last 09:13:42

17 24 hours? 09:13:44

18 A. Yes. 09:13:44

19 Q. Is that affecting at all your ability to 09:13:44

20 remember or to give complete testimony? 09:13:46

21 A. No. 09:13:48

22 Q. Are you taking any drugs or prescription 09:13:48

23 medications that would affect your memory or your 09:13:52

24 ability to give your best testimony? 09:13:54

25 A. No. 09:13:55

1 Q. What have you done to prepare for today's 09:13:58
2 deposition? 09:13:59

3 A. I've spent some time with Greenberg 09:14:00
4 Glusker. 09:14:04

5 Q. And when you say you've spent some time 09:14:05
6 with Greenberg Glusker, was that in person or on the 09:14:08
7 telephone or some combination of the two? 09:14:12

8 A. In person. 09:14:14

9 Q. And how many meetings have you had with 09:14:15
10 Greenberg to prepare for this deposition? 09:14:17

11 A. I've met with them on occasions over the 09:14:19
12 past two days. 09:14:22

13 Q. And on how many occasions? 09:14:26

14 A. Well, it's difficult to say. We were in 09:14:27
15 and out of meeting rooms and taking lunch so -- 09:14:30

16 Q. Fair enough. How -- so let's -- today's 09:14:34
17 Friday. Let's start with Wednesday. 09:14:36

18 Was Wednesday the first day that you met 09:14:37
19 with Greenberg to prepare for deposition? 09:14:39

20 A. It was. 09:14:40

21 Q. And how long did you meet with lawyers at 09:14:41
22 Greenberg to prepare for deposition on Wednesday? 09:14:44

23 A. I would say four or five hours in total. 09:14:49

24 Q. And was this at Greenberg Glusker's offices 09:14:55
25 here in Century City? 09:14:57

1 A. Yes, it was. 09:14:59

2 Q. And who were the attorneys who were present 09:14:59

3 at your meetings on Wednesday? 09:15:02

4 A. At various times, Bonnie Eskenazi, Liz 09:15:03

5 Moriarty and Ricardo Cestero. 09:15:09

6 Q. Was Cathleen Blackburn also present? 09:15:13

7 A. No, she wasn't. 09:15:16

8 Q. Was anybody else present aside from those 09:15:17

9 three attorneys and yourself? 09:15:20

10 A. Not that I recall. 09:15:21

11 Q. And Thursday, yesterday, you also met at 09:15:24

12 Greenberg to prepare for deposition; is that 09:15:26

13 correct? 09:15:26

14 A. Yes, that is correct. 09:15:29

15 Q. And who was present in the meetings other 09:15:31

16 than yourself? 09:15:33

17 A. The same individuals that I've identified. 09:15:33

18 Q. And how long were your meetings yesterday 09:15:35

19 in preparation for deposition? 09:15:37

20 A. Similarly, four or five hours. 09:15:40

21 Q. Did you review documents with the attorneys 09:15:42

22 from Greenberg Glusker in preparation for 09:15:50

23 deposition? 09:15:57

24 A. Yes, I did. 09:15:57

25 Q. And if you can estimate, roughly how many 09:15:58

1 documents did you review? 09:16:00

2 A. I'm not sure I can estimate. There were a 09:16:01

3 pile of documents. 09:16:03

4 Q. Do you know one way or another whether all 09:16:04

5 of the documents that you reviewed with the 09:16:09

6 Greenberg attorneys in preparation for today's 09:16:12

7 deposition had been -- have been produced in 09:16:13

8 discovery in this case? 09:16:16

9 A. Yes, I believe they have. 09:16:16

10 Q. Okay. Aside from -- one further question 09:16:24

11 on the meetings Thursday. 09:16:28

12 Was Ms. Blackburn present at your meetings 09:16:29

13 on Thursday? 09:16:31

14 A. No, she wasn't. 09:16:32

15 Q. Okay. Aside from -- aside from your 09:16:35

16 meetings with the Greenberg attorneys over the past 09:16:45

17 two days to prepare for deposition, have you spoken 09:16:50

18 with anyone else about the deposition today? 09:16:52

19 A. Well, other than people like family being 09:16:54

20 aware I was giving a deposition, no. 09:16:58

21 Q. Any conversations with Ms. Blackburn about 09:17:01

22 the deposition? 09:17:03

23 MS. ESKENAZI: Well, objection to the 09:17:06

24 extent that that calls for work product privilege, 09:17:09

25 attorney-client privilege. 09:17:12

1 MR. ULIN: At this point I'm just asking 09:17:14
2 whether they had conversations. 09:17:15

3 MS. ESKENAZI: I understand. 09:17:16

4 You can answer "yes" or "no." 09:17:17

5 THE WITNESS: Yes. 09:17:18

6 BY MR. ULIN: 09:17:18

7 Q. On how many occasions? 09:17:19

8 A. I can't recall. 09:17:20

9 Q. Did you discuss the substance of the 09:17:21
10 testimony that either you or she would offer at 09:17:23
11 deposition? 09:17:25

12 A. No. 09:17:25

13 Q. Have you reviewed the rough transcript of 09:17:30
14 Ms. Blackburn's deposition in this case from 09:17:33
15 Tuesday? 09:17:34

16 A. No. 09:17:34

17 Q. Do you have a copy of it? 09:17:36

18 A. No. 09:17:37

19 MS. ESKENAZI: Would you like to give him 09:17:39
20 one? 09:17:40

21 MR. ULIN: I didn't bring mine with me 09:17:41
22 today. I don't know that the reporting service 09:17:43
23 would look favorably on that. 09:17:49

24 Q. Did the documents that you reviewed with 09:17:57
25 Greenberg during your preparation sessions refresh 09:17:59

1 your recollection? 09:18:04

2 A. I wouldn't say they refreshed my 09:18:06

3 recollection. I could see what the documents said. 09:18:09

4 Q. Fair enough. Have you brought any 09:18:12

5 documents with you today to the deposition? 09:18:14

6 A. No. 09:18:16

7 Q. I'm going to ask a few questions about your 09:18:28

8 background and we're going to mark Exhibit Number 09:18:30

9 23. The reason we don't start at number 1 is we had 09:18:33

10 22 exhibits at Ms. Blackburn's deposition and we're 09:18:37

11 going to use a continuous sequence. 09:18:39

12 A. Okay. 09:18:41

13 (The document referred to was 09:18:53

14 marked for identification as 09:18:53

15 Exhibit 23 and attached to this 09:18:53

16 deposition.) 09:18:54

17 BY MR. ULIN: 09:18:54

18 Q. Mr. Maier, do you recognize Exhibit 23? 09:19:05

19 A. Yeah, it appears to be a copy of my CV. 09:19:07

20 Q. And this is the CV that's posted on the 09:19:18

21 Maier Blackburn Web site; is that correct? 09:19:22

22 A. I believe so. 09:19:26

23 Q. Does your CV accurately set forth your 09:19:27

24 educational background? 09:19:31

25 A. As far as I can see, yes, it does. 09:19:33

1 Q. Okay. And you studied law at Oxford; is 09:19:40
2 that correct? 09:19:40

3 A. Yes, I did. 09:19:44

4 Q. Does your CV accurately set forth your 09:19:48
5 professional history? 09:19:50

6 A. It does. The only thing that isn't 09:19:52
7 included is one year of what we call Law Society 09:19:59
8 finals that was in between university and starting 09:20:03
9 my professional career at Simmons & Simmons. 09:20:06

10 Q. Fair enough. Did any of your work, prior 09:20:08
11 to joining the Manches law firm, relate to the 09:20:15
12 Tolkien Estate or the works of J.R.R. Tolkien? 09:20:22

13 A. No, it did not. 09:20:24

14 Q. Okay. And you joined the Manches firm in 09:20:32
15 1992; is that correct? 09:20:34

16 A. That's correct. 09:20:36

17 Q. At what point in your career at Manches did 09:20:36
18 you begin working on Tolkien Estate matters? 09:20:40

19 A. To the best of my recollection, sometime 09:20:45
20 around 2002, roughly. 09:20:49

21 Q. And how did that come about? 09:20:56

22 A. Manches merged with a firm called Morrell 09:21:00
23 Peel & Gamlen. That firm was already working for 09:21:09
24 the Tolkien Estate. So that work came to the 09:21:10
25 combined firm. And at some point I was asked to get 09:21:13

1 involved in certain litigation matters. 09:21:19

2 Q. Okay. Had you done any work for the 09:21:22

3 Tolkien Estate or in connection with the works of 09:21:23

4 J.R.R. Tolkien -- pardon my pronunciation -- prior 09:21:25

5 to the merger of Morrell Peel into Manches? 09:21:32

6 A. No. 09:21:35

7 Q. Okay. What was the first Tolkien Estate 09:21:39

8 matter that you worked on? 09:21:41

9 A. I don't recall. 09:21:42

10 Q. On how many matters have you worked for the 09:21:45

11 Tolkien Estate over the years, if you can estimate? 09:21:58

12 A. I -- I can't say. 09:22:02

13 (Pages 25 through 29 are
14 marked confidential and are bound
15 under separate cover. The
16 nonconfidential portion of this
17 transcript continues on page 30.)
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1 Q. Does your work for the Tolkien Estate tend 09:23:36
2 to focus on particular legal issues? 09:23:51

3 MS. ESKENAZI: Objection. Vague and 09:23:54
4 ambiguous. 09:23:56

5 BY MR. ULIN: 09:23:56

6 Q. You may answer. 09:23:57

7 A. I'm called in to deal with particular 09:23:58
8 litigation matters. 09:24:01

9 Q. And is all of your work for the Tolkien 09:24:13
10 Estate litigation matters or, as you might call it, 09:24:16
11 contentious work? 09:24:19

12 A. I imagine there are odd occasions where 09:24:20
13 there are overlap into transactional, but mostly 09:24:32
14 litigation. 09:24:35

15 Q. During the time when you were at Manches, 09:24:36
16 were there other attorneys who worked with you on 09:24:56
17 Tolkien Estate matters? 09:24:58

18 A. I'm not exactly sure by what you mean, with 09:24:59
19 me. 09:25:09

20 Q. I suppose what I mean is, when you were 09:25:18
21 working on Tolkien Estate matters, were -- were you 09:25:21
22 the only attorney working on the matters for which 09:25:22
23 you had responsibility or did you have a team? And 09:25:25
24 the next question will be, if so, who are they? 09:25:29

25 A. Right. I generally did not have anyone 09:25:31

1 working beneath me. However, there would be another 09:25:34

2 attorney aware of all matters in which I was acting. 09:25:39

3 Q. And is that Ms. Blackburn? 09:25:42

4 A. Yes. 09:25:44

5 Q. And do you typically consult with 09:25:58

6 Ms. Blackburn on the litigation matters that you 09:26:01

7 handle for the Tolkien Estate? 09:26:02

8 A. Yes. 09:26:04

9 Q. Other than Ms. Blackburn, were there any 09:26:15

10 other Manches attorneys with whom you worked on 09:26:17

11 Tolkien Estate matters? 09:26:20

12 MS. ESKENAZI: Objection. Asked and 09:26:22

13 answered. 09:26:24

14 THE WITNESS: Not that I recall. 09:26:24

15 BY MR. ULIN: 09:26:24

16 Q. Did you ever work with Dick Williamson? 09:26:29

17 A. No. 09:26:31

18 Q. Have you ever met him? 09:26:31

19 A. Yes, I have. 09:26:33

20 Q. Have you ever discussed the substance of 09:26:44

21 any of your Tolkien Estate matters with 09:26:45

22 Mr. Williamson? 09:26:48

23 MS. ESKENAZI: Objection. Attorney-client 09:26:49

24 privilege. 09:26:50

25 You can answer just "yes" or "no," assuming 09:26:54

1 that we have a stipulation that it doesn't waive -- 09:26:56

2 MR. ULIN: That's fine. I don't think this 09:26:57

3 waives the privilege in any way anyhow, but that's 09:26:59

4 fine, I'm happy to stipulate. 09:27:02

5 THE WITNESS: Yes. 09:27:03

6 BY MR. ULIN: 09:27:03

7 Q. And on how many occasions have you 09:27:04

8 consulted with Mr. Williamson about Tolkien Estate 09:27:05

9 matters? 09:27:09

10 A. Once. 09:27:10

11 Q. And what year was that? 09:27:14

12 A. I don't recall. 09:27:16

13 Q. Prior to 2010? 09:27:19

14 A. Yes. 09:27:23

15 Q. Do you recall whether it was closer to 2002 09:27:27

16 or closer to 2010? 09:27:31

17 A. Somewhere in the middle of those two dates. 09:27:32

18 Q. Do you recall what matter it was in which 09:28:00

19 you consulted with Mr. Williamson? 09:28:02

20 MS. ESKENAZI: Again, this is -- this is 09:28:03

21 potentially invasive of the attorney-client 09:28:06

22 privilege. If there's a stipulation that he can 09:28:08

23 answer just about the subject matter, without 09:28:10

24 waiving that privilege, I'll allow him to answer -- 09:28:12

25 MR. ULIN: That's fine. 09:28:15

1 MS. ESKENAZI: -- in a general sense. 09:28:15

2 THE WITNESS: Yes, I do. 09:28:17

3 BY MR. ULIN: 09:28:17

4 Q. And what was the matter on which you 09:28:27

5 consulted with Mr. Williamson? 09:28:29

6 MS. ESKENAZI: Same stipulation? 09:28:33

7 MR. ULIN: Yes. 09:28:33

8 MS. ESKENAZI: Thank you. 09:28:34

9 THE WITNESS: It related to the film 09:28:34

10 participations claim against New Line Cinema. 09:28:35

11 BY MR. ULIN: 09:28:35

12 Q. And do I understand correctly that other 09:28:52

13 than consulting with Mr. Williamson at some point 09:28:53

14 during the last decade about the film participations 09:28:57

15 claim against New Line Cinema, you otherwise have 09:29:01

16 not spoken with him about Tolkien Estate matters at 09:29:03

17 all; is that correct? 09:29:06

18 A. That's correct. 09:29:10

19 Q. With respect to your consultation with 09:29:10

20 Mr. Williamson about the film participations claim 09:29:19

21 against New Line Cinema, was that one meeting or 09:29:22

22 more than one meeting? 09:29:27

23 A. To the best of my recollection, one 09:29:28

24 meeting. 09:29:35

25 Q. And were there telephone calls as well? 09:29:35

1 A. No. 09:29:35

2 Q. When was the first time you recall being 09:29:55

3 called on to become involved with a Tolkien Estate 09:29:58

4 matter that related to the Saul Zaentz Company? 09:30:01

5 MS. ESKENAZI: Objection. Vague and 09:30:08

6 ambiguous. 09:30:09

7 THE WITNESS: I don't recall. 09:30:09

8 BY MR. ULIN: 09:30:09

9 Q. Do you recall what the first matter was 09:30:23

10 that you worked on that related to the Saul Zaentz 09:30:25

11 Company? 09:30:27

12 A. I don't recall. 09:30:27

13 Q. Speaking generally over the years in the 09:30:30

14 period 2002 to the present, what matters do you 09:30:42

15 recall working on that related to the Saul Zaentz 09:30:48

16 Company? 09:30:49

17 A. I have a difficulty with the formulation 09:30:49

18 "related to." Because they may have had an interest 09:30:55

19 or they may not have been the subject matter of 09:31:03

20 the -- the matter. 09:31:08

21 Q. Fair enough. So I -- let me reframe the 09:31:08

22 question to ask you what matters you recall working 09:31:13

23 on in which you have interacted with the Saul Zaentz 09:31:18

24 Company? 09:31:22

25 A. I'm sorry, you'll need to rephrase again. 09:31:22

1 Are you asking me the number of matters or to 09:31:31
2 identify them or -- 09:31:33

3 Q. I'm asking you to identify them. And you 09:31:34
4 can do it in broad strokes at this point. 09:31:35

5 A. The interaction I recall related to the 09:31:37
6 Class 16 trademarks issue. I remember that early on 09:31:45
7 I was involved in a -- an infringement case where it 09:31:50
8 came to my attention that they had registered the 09:31:55
9 trademark Lord of the Rings in Class 16. This was 09:31:59
10 problematic. And I had some interaction with them 09:32:04
11 or their external counsel in connection with that. 09:32:09

12 Q. And is that the matter that relates to the 09:32:12
13 book entitled "Magical World of Lord of" -- "Worlds 09:32:15
14 of Lord of the Rings"? 09:32:18

15 A. That sounds familiar. 09:32:21

16 Q. And we'll come back to that. 09:32:22

17 In 2012 you and Ms. Blackburn left the 09:32:24
18 Manches firm and formed your own firm in Oxford, 09:32:44
19 correct? 09:32:44

20 A. Yeah, I suppose technically we left on 31st 09:32:49
21 December 2011 and started up on 1st January 2012. 09:32:52

22 Q. Fair enough. Were you able to bring all of 09:32:55
23 your work related to the Tolkien Estate from Manches 09:33:02
24 to Maier Blackburn? 09:33:04

25 A. Those clients chose to follow us to Maier 09:33:05

1 Blackburn, yes. 09:33:09

2 Q. Fair enough. Do you still have all of your 09:33:10

3 files on Tolkien Estate-related work from the period 09:33:14

4 at which you -- in which you worked at Manches? 09:33:19

5 MS. ESKENAZI: Objection. Vague and 09:33:22

6 ambiguous. 09:33:26

7 THE WITNESS: That's quite a complex 09:33:26

8 question in view of archiving of files, current 09:33:28

9 files, closed files. I think you would have to be 09:33:32

10 more specific. 09:33:35

11 BY MR. ULIN: 09:33:35

12 Q. Do you have access to all of the files for 09:33:35

13 your Tolkien Estate matters, regardless of whether 09:33:39

14 they were at Manches or since you've opened your new 09:33:43

15 firm? 09:33:46

16 MS. ESKENAZI: Objection. Vague and 09:33:47

17 ambiguous. 09:33:49

18 THE WITNESS: Yes, I believe that I do. 09:33:49

19 BY MR. ULIN: 09:33:58

20 Q. And were those files made available to your 09:33:58

21 counsel in this case in connection with the 09:34:00

22 discovery that's been served? 09:34:03

23 A. Yes, they were. 09:34:05

24 Q. What entities do you understand to comprise 09:34:11

25 the Tolkien Estate? 09:34:14

1 MS. ESKENAZI: Objection. Vague and 09:34:16
2 ambiguous. 09:34:16

3 THE WITNESS: Two entities, the Tolkien 09:34:16
4 Estate Limited, which is a U.K. limited company, and 09:34:22
5 the Tolkien Trust, which is a charity. 09:34:26

6 BY MR. ULIN: 09:34:26

7 Q. And those are both your clients; is that 09:34:32
8 correct? 09:34:32

9 A. They're both clients of the firm for whom I 09:34:34
10 do work. 09:34:36

11 Q. Okay. And are they your clients in this -- 09:34:42
12 in connection with this case? 09:34:44

13 A. Yes, they are. 09:34:45

14 Q. Do you have any formal position, either in 09:34:46
15 the Tolkien Estate Limited or the Tolkien Trust? 09:34:58

16 A. Yes. 09:35:02

17 Q. Can you explain? 09:35:03

18 A. I'm appointed as a director of the Tolkien 09:35:04
19 Estate Limited. 09:35:08

20 Q. Do you also have a formal position in the 09:35:14
21 Tolkien Trust? 09:35:21

22 A. No, I have no position in the Tolkien 09:35:21
23 Trust. 09:35:24

24 Q. When were you appointed as a director of 09:35:24
25 the Tolkien Estate Limited? 09:35:27

1 A. I believe it was 2011. 09:35:29

2 Q. And you've served continuously since that 09:35:33

3 time; is that correct? 09:35:38

4 A. Yes, I have. 09:35:39

5 Q. Is there a term for your appointment? 09:35:40

6 A. I don't believe so. 09:35:43

7 Q. So you're appointed to the directorship 09:35:48

8 indefinitely; is that correct? 09:35:51

9 A. To the best of my understanding. 09:35:53

10 Q. Do you receive compensation for your 09:35:54

11 services as director of the Tolkien Estate Limited? 09:35:57

12 A. No. 09:36:00

13 Q. Have you ever? 09:36:04

14 A. No. 09:36:04

15 Q. What are your responsibilities as a 09:36:08

16 director of the Tolkien Estate Limited? 09:36:10

17 MS. ESKENAZI: Objection. Vague and 09:36:12

18 ambiguous. 09:36:13

19 THE WITNESS: It's very much a nominal 09:36:16

20 appointment as what we refer to as the non-family 09:36:18

21 director. And I don't have any executive 09:36:20

22 responsibility at all. 09:36:25

23 BY MR. ULIN: 09:36:30

24 Q. How much of your time do you commit to 09:36:30

25 that -- to your role as a non-family director of the 09:36:31

1 Tolkien Estate Limited? 09:36:33

2 A. No substantial time. 09:36:34

3 Q. Who are your client contacts at the Tolkien 09:36:53

4 Estate Limited? 09:36:58

5 MS. ESKENAZI: Objection. Vague and 09:36:59

6 ambiguous. Assumes facts not in evidence. 09:37:01

7 THE WITNESS: The way that the clients 09:37:03

8 operate is that Cathleen Blackburn is the client 09:37:07

9 contact partner. 09:37:10

10 BY MR. ULIN: 09:37:10

11 Q. Are you saying that with respect to 09:37:17

12 contacting the Tolkien Estate clients, Ms. Blackburn 09:37:19

13 makes those contacts and you do not? 09:37:22

14 A. In general terms, that's correct. 09:37:27

15 Q. Do you have -- do you personally have 09:37:28

16 contacts with the client in connection with this 09:37:57

17 case? 09:37:59

18 A. I have spoken to them on occasions in 09:38:00

19 connection with this case. 09:38:10

20 Q. And who are the people at the Tolkien 09:38:11

21 Estate that you have spoken with about this case? 09:38:16

22 MS. ESKENAZI: Again, if there's a 09:38:21

23 stipulation that this doesn't waive the 09:38:22

24 attorney-client privilege. 09:38:25

25 MR. ULIN: That's fine. I'm not asking 09:38:25

1 about substance at the moment. I'm just asking who. 09:38:27

2 MS. ESKENAZI: I hear you but we're -- 09:38:28

3 MR. ULIN: Okay. 09:38:28

4 MS. ESKENAZI: -- starting to get there. 09:38:30

5 THE WITNESS: Priscilla Tolkien, Michael 09:38:32

6 Tolkien, Simon Tolkien, Christopher Tolkien, Baillie 09:38:34

7 Tolkien. 09:38:39

8 BY MR. ULIN: 09:38:39

9 Q. Page 2 of your CV, which is Exhibit 23, the 09:39:01

10 first entry in your recent examples of IP and media 09:39:06

11 litigation matters, you describe as advising the 09:39:12

12 J.R.R. Tolkien Estate in \$150 million claim against 09:39:16

13 New Line Cinemas -- Cinema/Warner Bros., et cetera, 09:39:21

14 right? 09:39:21

15 A. I see that. 09:39:24

16 Q. Is that the only entry on your CV that 09:39:25

17 relates to your work for the Tolkien Estate? 09:39:29

18 A. Sorry, are you asking me is that the only 09:39:31

19 entry listed on this page? 09:39:36

20 Q. Yes. Well -- 09:39:39

21 A. Oh, I see. I understand -- 09:39:40

22 Q. -- you do have a second page of -- 09:39:40

23 A. -- the question. 09:39:41

24 Q. -- examples, but -- 09:39:41

25 A. I understand the question. 09:39:44

1 Q. -- yes. 09:39:44

2 A. That's the only Tolkien Estate matter 09:40:01

3 that's listed there. 09:40:02

4 Q. Outside of Maier Blackburn and Manches, are 09:40:14

5 there other law firms with which you have worked on 09:40:17

6 Tolkien Estate matters over the years? 09:40:23

7 A. Yes. 09:40:24

8 Q. And which firms are those? 09:40:27

9 A. Davis Wright Tremaine would be one. 09:40:28

10 Q. Any others? 09:40:37

11 A. There have been a couple of others just on 09:40:38

12 miscellaneous matters. I can't necessarily remember 09:40:42

13 who they were now. 09:40:45

14 Sorry. Would you -- would you repeat the 09:40:54

15 question? I want to make sure I've given you an 09:40:55

16 accurate answer. 09:40:58

17 Q. Yes. I asked whether outside of Maier 09:40:58

18 Blackburn and Manches there are other law firms with 09:41:00

19 which you have worked over the years on Tolkien 09:41:03

20 Estate matters. And I'm focusing on other firms 09:41:05

21 that also represented the Estate. 09:41:07

22 A. Right. So we need to include Loeb & Loeb 09:41:08

23 and Greenberg Glusker. 09:41:12

24 Q. On how many occasions have you worked with 09:41:25

25 Davis Wright to represent the Estate? 09:41:28

1 MS. ESKENAZI: Objection. Vague and 09:41:30
2 ambiguous. 09:41:33

3 THE WITNESS: I can only think of one 09:41:41
4 occasion as I sit here today. 09:41:43

5 BY MR. ULIN: 09:41:43

6 Q. What case was that or what matter was that? 09:41:44

7 A. It related to a subpoena in the United 09:41:47
8 States to obtain details of an infringing party who 09:41:50
9 was domiciled in the United States. 09:41:56

10 Q. And who was the infringing party? 09:42:02

11 A. I don't recall. 09:42:03

12 Q. A subpoena that the Estate was serving on 09:42:06
13 an infringing party; is that correct? 09:42:11

14 A. To the best of my recollection, the case 09:42:13
15 involved a file sharing Web site and we wanted to 09:42:17
16 obtain details of the individuals who were posting 09:42:22
17 infringing copies of the Tolkien books on that Web 09:42:28
18 site. 09:42:30

19 Q. The subpoena went to the Web site or a Web 09:42:36
20 intermediary? 09:42:40

21 A. I don't recall the details. It was some 09:42:41
22 years ago. 09:42:43

23 Q. Fair enough. On how many occasions have 09:42:44
24 you worked with Loeb & Loeb on Tolkien Estate 09:42:50
25 matters? 09:42:51

1 A. One. 09:42:51

2 Q. And what was that? 09:42:52

3 A. That was the film participation litigation 09:42:55

4 against New Line. 09:42:58

5 Q. And on how many occasions have you worked 09:42:59

6 with Greenberg Glusker in connection with the Estate 09:43:04

7 matters? 09:43:07

8 MS. ESKENAZI: Objection. Vague and 09:43:07

9 ambiguous. 09:43:11

10 THE WITNESS: Well, that is a little vague 09:43:11

11 because Greenberg have represented the Estate for a 09:43:13

12 number of years now in connection with, initially, 09:43:17

13 New Line/Warner and now the current matter. 09:43:23

14 BY MR. ULIN: 09:43:23

15 Q. With respect to Greenberg, have you worked 09:43:32

16 with them outside the context of either the film 09:43:33

17 participation dispute or this case? 09:43:36

18 MS. ESKENAZI: Objection. Vague and 09:43:39

19 ambiguous. 09:43:41

20 THE WITNESS: Do you mean on Tolkien 09:43:41

21 matters or -- 09:43:42

22 BY MR. ULIN: 09:43:43

23 Q. Yes, on Tolkien matters. I do mean that. 09:43:43

24 MS. ESKENAZI: Same objection. 09:43:47

25 THE WITNESS: Not that I recall. 09:43:49

1 BY MR. ULIN: 09:43:49

2 Q. Have you also worked with Greenberg on 09:43:50

3 matters for clients other than the Tolkien Estate? 09:43:52

4 A. Yes. 09:43:54

5 MS. ESKENAZI: That's -- yeah, that's a 09:43:55

6 "yes" or "no" question. 09:43:57

7 BY MR. ULIN: 09:43:57

8 Q. And which clients? 09:44:01

9 MS. ESKENAZI: Well, I'm going to object on 09:44:03

10 relevance and privacy grounds. 09:44:06

11 THE WITNESS: Classic Media. 09:44:11

12 BY MR. ULIN: 09:44:11

13 Q. Anyone other than Classic Media? 09:44:16

14 A. Not that I recall. 09:44:17

15 Q. And when was the Classic Media matter on 09:44:22

16 which you worked with Greenberg? 09:44:30

17 A. I don't recall. 09:44:31

18 Q. Prior to 2010? 09:44:34

19 A. Yes. 09:44:37

20 Q. Overall, how would you describe your duties 09:44:56

21 and responsibilities with respect to the Estate? 09:44:58

22 MS. ESKENAZI: Objection. Vague and 09:45:03

23 ambiguous. 09:45:05

24 THE WITNESS: I handle litigation matters 09:45:05

25 for them when called upon to do so. 09:45:07

1 BY MR. ULIN: 09:45:07

2 Q. Outside of your particular litigation 09:45:31

3 matters, do you have regular responsibilities in -- 09:45:33

4 with respect to the Estate? 09:45:38

5 A. No. 09:45:39

6 Q. How would you describe Ms. Blackburn's 09:45:48

7 duties and responsibilities with respect to the 09:45:49

8 Estate? 09:45:51

9 MS. ESKENAZI: Objection. Calls for 09:45:52

10 speculation. Lacks foundation. Vague and 09:45:54

11 ambiguous. 09:45:54

12 BY MR. ULIN: 09:45:54

13 Q. You may answer. 09:45:56

14 A. She's the principal contact for the Tolkien 09:45:58

15 Estate within our law firm and she looks after their 09:46:00

16 legal matters. 09:46:03

17 Q. Have your responsibilities with respect to 09:46:05

18 the Estate changed over time? 09:46:10

19 A. No. 09:46:11

20 Q. Do you have any duties with respect to The 09:46:33

21 Lord of the Rings or Hobbit films? 09:46:39

22 MS. ESKENAZI: Objection. Vague and 09:46:43

23 ambiguous. Lacks foundation. 09:46:45

24 BY MR. ULIN: 09:46:45

25 Q. You may answer. 09:46:48

1 A. Other than in connection with the 09:46:50
2 litigation that I've described, no, if I've 09:46:51
3 understood your question. 09:46:54

4 Q. Okay. Do you have any duties with respect 09:46:56
5 to monitoring on a regular basis compliance, 09:46:57
6 infringement, royalties with respect to the films? 09:47:01

7 MS. ESKENAZI: Vague and ambiguous. Lacks 09:47:07
8 foundation. 09:47:07
9 BY MR. ULIN: 09:47:07

10 Q. You may answer. 09:47:09

11 A. What were the three things you listed? I'm 09:47:10
12 sorry. 09:47:10

13 Q. I listed compliance, infringement, 09:47:12
14 royalties. 09:47:16

15 A. I'm not entirely sure what you mean 09:47:21
16 "infringement" with regard to the films. 09:47:22

17 Do you mean infringement of -- of what? 09:47:24

18 Q. Well, I'm asking -- I'm probing further in 09:47:29
19 my previous questions -- 09:47:32

20 A. Right. 09:47:33

21 Q. -- which goes to -- which goes to whether 09:47:33
22 you have any ongoing responsibilities to monitor 09:47:35
23 legal issues with respect to the films. I called 09:47:37
24 out a few examples but more generally, that's what 09:47:39
25 I'm asking. 09:47:44

1 MS. ESKENAZI: Objection. Vague and 09:47:45
2 ambiguous. Lacks foundation. Compound. 09:47:45

3 THE WITNESS: Insofar as I understand your 09:47:46
4 question, the answer is no, I don't have ongoing 09:47:48
5 responsibilities of that kind. 09:47:50

6 BY MR. ULIN: 09:47:50

7 Q. Is there somebody at your firm who does 09:47:52
8 have such responsibilities? 09:47:54

9 MS. ESKENAZI: Objection. Vague and 09:47:57
10 ambiguous. Lacks foundation. Compound. Calls for 09:48:00
11 speculation. 09:48:04

12 THE WITNESS: I don't know. 09:48:04

13 BY MR. ULIN: 09:48:04

14 Q. How many lawyers at the firm? 09:48:06

15 A. Two. 09:48:08

16 Q. Yourself and Ms. Blackburn? 09:48:09

17 A. Correct. 09:48:10

18 Q. Do you have a fairly good idea of what 09:48:11
19 Ms. Blackburn's practice is? 09:48:13

20 MS. ESKENAZI: Objection. Vague and 09:48:17
21 ambiguous. Lacks foundation. Speculation. 09:48:19

22 BY MR. ULIN: 09:48:19

23 Q. You may answer. 09:48:22

24 A. Well, insofar as I interact with 09:48:23

25 Ms. Blackburn, yes, but Ms. Blackburn does a great 09:48:25

1 deal of work of which I have no knowledge. 09:48:27

2 Q. And you and she jointly work on Tolkien 09:48:29

3 Estate matters, right? 09:48:32

4 A. On some Tolkien Estate matters. 09:48:33

5 Q. You have for 12 or 13 years, correct? My 09:48:34

6 number might be off. 11 years? 09:48:40

7 A. Something like. 09:48:42

8 Q. And you don't know whether she monitors 09:48:43

9 legal issues with respect to The Lord of the Rings 09:48:56

10 and Hobbit films? 09:48:58

11 MS. ESKENAZI: Objection. Vague and 09:49:01

12 ambiguous. 09:49:04

13 THE WITNESS: I don't really understand 09:49:04

14 what you mean by monitoring legal issues. 09:49:05

15 BY MR. ULIN: 09:49:05

16 Q. Keeping herself abreast of the films and 09:49:10

17 issues that may affect the Estate that result from 09:49:13

18 them? 09:49:19

19 MS. ESKENAZI: Same objection, plus calls 09:49:20

20 for speculation. Lacks foundation. 09:49:22

21 THE WITNESS: Again, I don't really 09:49:23

22 understand to what extent you're implying a 09:49:24

23 proactive element. But in any event, I don't know 09:49:26

24 the answer to the question. 09:49:29

25 BY MR. ULIN: 09:49:29

1 Q. Fair enough. Do you have any duties or 09:49:31
2 responsibilities that relate to monitoring print 09:49:41
3 publications that relate to The Lord of the Rings or 09:49:45
4 The Hobbit? 09:49:49

5 MS. ESKENAZI: Objection. Vague and 09:49:50
6 ambiguous. 09:49:55

7 THE WITNESS: I will take action in respect 09:49:55
8 of infringing print publications of which I'm made 09:49:57
9 aware in appropriate cases. 09:50:01

10 BY MR. ULIN: 09:50:01

11 Q. And are you -- do you have any 09:50:05
12 responsibility for monitoring what infringements may 09:50:06
13 be in the marketplace in -- in the realm of print? 09:50:10

14 A. I carry out a certain number of spot-checks 09:50:13
15 from time to time. 09:50:15

16 Q. And how do you accomplish that? 09:50:16

17 A. Mainly on the Internet. 09:50:18

18 Q. Excuse me. Do you have a service that 09:50:21
19 undertakes those spot-checks for you? 09:50:25

20 A. No. 09:50:28

21 MS. ESKENAZI: Objection. Vague and 09:50:29
22 ambiguous. 09:50:30

23 BY MR. ULIN: 09:50:30

24 Q. You do the spot-checks yourself? 09:50:30

25 A. Yes. 09:50:32

1 Q. And what -- what exactly do you do to check 09:50:33

2 for infringing print publications relating to The 09:50:35

3 Lord of the Rings and The Hobbit? 09:50:40

4 A. Well, an example would be that I would do a 09:50:41

5 search within Amazon on the titles of the books. 09:50:44

6 Q. Do you do anything other than search Amazon 09:50:49

7 for the titles of the books? 09:50:52

8 A. I don't recall. 09:50:54

9 Q. How often do you search Amazon for the 09:50:55

10 titles of the books? 09:50:57

11 A. It varies. 09:50:59

12 Q. On roughly how many occasions have you 09:51:04

13 searched Amazon for the titles of the books? 09:51:09

14 MS. ESKENAZI: Objection. Vague and 09:51:11

15 ambiguous. 09:51:12

16 THE WITNESS: I don't recall. 09:51:12

17 BY MR. ULIN: 09:51:14

18 Q. How many spot-checks did you do during 09:51:14

19 2013? 09:51:16

20 A. Probably one. 09:51:16

21 Q. How many did you do during 2012? 09:51:23

22 A. One or two. 09:51:26

23 Q. Would you say those represent average years 09:51:31

24 with respect to how many spot-checks you do? 09:51:35

25 A. I would say so. 09:51:36

1 Q. Do you do any spot-checks for Lord of the 09:51:44
2 Rings or Hobbit-related infringements in categories 09:51:52
3 other than books? 09:51:59

4 MS. ESKENAZI: Objection. Vague and 09:52:00
5 ambiguous. 09:52:03

6 THE WITNESS: Yes, I do. 09:52:03

7 BY MR. ULIN: 09:52:03

8 Q. And what cat- -- what categories of 09:52:05
9 infringements do you do spot-checks for? 09:52:09

10 A. I would principally be looking for 09:52:12
11 copyright infringement on merchandise like mugs, 09:52:16
12 aprons, which will reproduce text from the works. 09:52:25

13 Q. And how do you spot-check for that? 09:52:30

14 A. Again, by doing Internet searches. 09:52:34

15 Q. Is that on Amazon or something else? 09:52:37

16 A. Not necessarily. 09:52:40

17 Q. Okay. So what -- if not Amazon, what -- 09:52:42
18 how are you conducting those searches? 09:52:46

19 A. I would use a search term like, "Lord of 09:52:47
20 the Rings merchandise," something like that. 09:52:53

21 Q. And what search engine would you use? 09:52:59

22 A. Google. 09:53:02

23 Q. How often do you do spot-checks on Google 09:53:03
24 for infringing Lord of the Rings merchandise? 09:53:13

25 A. Perhaps once or twice a year. 09:53:17

1 Q. Do you also do spot-checks with relation to 09:53:19
2 infringements connected to video games? 09:53:34

3 A. No. 09:53:40

4 Q. Have you ever? 09:53:43

5 A. Not that I recall. 09:53:43

6 Q. Do you have any responsibility to keep up 09:53:49
7 with new media and how they may affect Lord of the 09:53:55
8 Rings and The Hobbit IP rights? 09:54:00

9 MS. ESKENAZI: Objection. Vague and 09:54:02
10 ambiguous. 09:54:06

11 THE WITNESS: I have no responsibility to 09:54:06
12 that effect, no. 09:54:08

13 BY MR. ULIN: 09:54:08

14 Q. Have you undertaken to do any spot-checks 09:54:10
15 of new media and whether that's been a vehicle for 09:54:15
16 infringement of Lord of the Rings or Hobbit IP 09:54:20
17 rights? 09:54:24

18 MS. ESKENAZI: Objection. Vague and 09:54:24
19 ambiguous. Compound. 09:54:26

20 THE WITNESS: I don't really understand the 09:54:27
21 term "new media." 09:54:29

22 BY MR. ULIN: 09:54:29

23 Q. Do you do any spot-checks on Web sites like 09:55:12
24 Facebook or YouTube or on Twitter to determine 09:55:18
25 whether there are Lord of the Rings and Hobbit 09:55:27

1 infringements on those sort of Web sites? 09:55:31

2 A. No. 09:55:34

3 Q. Any spot-checks on user-generated content 09:55:34

4 sites? Again, YouTube would be an example of such a 09:55:38

5 site, but there are others. 09:55:43

6 MS. ESKENAZI: Objection. Vague and 09:55:44

7 ambiguous. 09:55:44

8 THE WITNESS: I don't do any spot-checks of 09:55:44

9 that kind. 09:55:46

10 BY MR. ULIN: 09:55:50

11 Q. Is HarperCollins your client? 09:55:50

12 MS. ESKENAZI: Objection. Vague and 09:55:53

13 ambiguous. 09:55:54

14 THE WITNESS: HarperCollins is the joint 09:55:54

15 owner of The Lord of the Rings and Hobbit and we 09:55:56

16 work very closely with HarperCollins' legal and 09:55:59

17 business people in developing legal theories and 09:56:02

18 going forward with the enforcement of rights. But 09:56:06

19 they're not technically a client of Maier Blackburn. 09:56:09

20 BY MR. ULIN: 09:56:09

21 Q. You don't have a retainer agreement with 09:56:15

22 HarperCollins? 09:56:17

23 MS. ESKENAZI: Objection. Vague and 09:56:19

24 ambiguous. 09:56:21

25 THE WITNESS: The firm Maier Blackburn does 09:56:21

1 not have a retainer agreement with HarperCollins. 09:56:25

2 BY MR. ULIN: 09:56:31

3 Q. And did Manches have a retainer agreement 09:56:31

4 with HarperCollins? 09:56:34

5 A. Not to my knowledge. 09:56:35

6 Q. I want to turn to what you discussed as the 09:56:45

7 issue over trademarks in International Class 16. 09:56:49

8 Has that been the princ- -- has the Class 09:56:56

9 16 issues been the principal focus of your work in 09:57:13

10 connection with the Estate's interaction with the 09:57:19

11 Saul Zaentz Company up until the filing of this 09:57:25

12 litigation? 09:57:27

13 MS. ESKENAZI: Objection. Vague and 09:57:27

14 ambiguous. 09:57:31

15 THE WITNESS: I would think that's the 09:57:31

16 issue that's occupied most of my time in interacting 09:57:33

17 with the Saul Zaentz Company. 09:57:36

18 BY MR. ULIN: 09:57:36

19 Q. And you're aware that Class 16 generally 09:57:40

20 covers paper goods and printed matter, correct? 09:57:42

21 A. I would need to review exactly what it 09:57:46

22 says, but as a general statement of principle, that 09:57:47

23 sounds right. 09:57:49

24 Q. Okay. And you know the Estate's position 09:57:57

25 in this case is that Zaentz is unlawfully registered 09:58:01

1 as the owners of trademarks in International Class 09:58:04
2 16 with the effect of excluding plaintiffs from 09:58:08
3 registering their own legitimate trademarks in that 09:58:11
4 class with respect to The Lord of the Rings and The 09:58:14
5 Hobbit, correct? 09:58:16

6 A. I'd need to review the complaint but that 09:58:18
7 sounds right. 09:58:23

8 Q. When do you first recall becoming involved 09:58:24
9 with the Class 16 issues as between Zaentz and the 09:58:27
10 Estate? 09:58:33

11 A. It was in connection with the infringement 09:58:34
12 matter that I described to you earlier. 09:58:36

13 Q. I'll come back to that in a moment. 09:58:38

14 How many attempts would you estimate have 09:58:55
15 been made to reach an agreement with respect to 09:59:00
16 Class 16 rights as between Zaentz and the Estate? 09:59:05

17 MS. ESKENAZI: Objection. It's vague and 09:59:08
18 ambiguous. 09:59:10

19 THE WITNESS: I wouldn't characterize it as 09:59:10
20 a number of attempts. There's been an ongoing 09:59:11
21 dialogue for many years seeking to do that. 09:59:15

22 BY MR. ULIN: 09:59:15

23 Q. And both sides have made a number of 09:59:17
24 proposals to resolve the issues concerning Class 16, 09:59:19
25 correct? 09:59:19

1 A. I don't recall the exact details but that 09:59:25
2 sounds right. 09:59:27

3 Q. But despite the proposals that have been 09:59:28
4 exchanged, those issues have not been resolved as of 09:59:31
5 yet, correct? 09:59:34

6 A. Correct. 09:59:36

7 Q. And that's why they're a part of the 09:59:36
8 current lawsuit, correct? 09:59:39

9 A. Correct. 09:59:40

10 Q. I might have asked you this earlier. Do 09:59:41
11 you recall a book entitled "The Magical World of The 09:59:54
12 Lord of the Rings"? 09:59:58

13 A. That title is somewhat familiar. 09:59:58

14 Q. Is that the dispute that you identified 10:00:00
15 earlier which was your first involvement with Estate 10:00:04
16 matters and your first -- sorry, with Estate matters 10:00:08
17 that relate to the Saul Zaentz Company, and your 10:00:10
18 first -- also your first involvement with the Class 10:00:13
19 16 issue? 10:00:15

20 A. I don't recall. 10:00:16

21 MR. ULIN: Let's mark Exhibit 24. 10:00:18

22 (The document referred to was 10:00:18
23 previously marked for 10:00:18
24 identification as Exhibit 20 and 10:00:18
25 attached to this deposition.) 10:00:18

1 MR. ULIN: This may be duplicative of an 10:00:39
2 earlier exhibit but I'm not sure I have the running 10:00:41
3 list of exhibits and I think I'd be inclined just to 10:00:42
4 mark it again for the purpose of proceeding today. 10:00:46

5 MS. ESKENAZI: I think it is, actually. 10:00:53

6 MR. ULIN: I'm pretty sure it is but I 10:00:54
7 don't think we have the stack, so I think the only 10:00:56
8 way we're going to be able to proceed is to mark it 10:00:58
9 again as 24. 10:01:01

10 THE REPORTER: O'Melveny was e-mailed the
11 exhibits.

12 MR. ULIN: Oh. We may be able to do
13 something at a break.

14 MS. ESKENAZI: Yeah, we might be able to.

15 MR. ULIN: Maybe we can renum- -- something
16 like that.

17 MS. ESKENAZI: Yeah.

18 BY MR. ULIN:

19 Q. Mr. Maier, have you seen Exhibit 24 before? 10:01:55

20 A. I don't recall. 10:01:58

21 Q. This appears to be a letter from 10:02:06
22 Ms. Blackburn to Al Bendich at the Saul Zaentz 10:02:12
23 Company dated May the 3rd, 2002. 10:02:16

24 Do you see that? 10:02:16

25 A. That's what it appears to be, yeah. 10:02:20

1 Q. And the letter relates to enforcement 10:02:22

2 against or concerning the book Magical World of Lord 10:02:24

3 of the Rings, right? 10:02:29

4 A. Okay, it's quite a complex letter. Would 10:02:30

5 you like me to read it? 10:02:32

6 Q. I can direct -- you may, obviously, but I 10:02:35

7 can direct you to the portions of the letter that 10:02:37

8 are going to be significant for our purposes. 10:02:39

9 In the center of the second page of the 10:02:42

10 letter, Ms. Blackburn refers to a -- excuse me -- a 10:02:49

11 problem in the Estate taking action against or with 10:02:55

12 respect to that book based on the Tolkien titles 10:02:58

13 because the trademark registrations in Class 16 for 10:03:05

14 those titles are held in Zaentz's name. 10:03:08

15 A. I see that paragraph. 10:03:14

16 Q. Do you see that? 10:03:14

17 A. Yeah, yeah. 10:03:15

18 Q. Is that your -- with respect to the 10:03:16

19 Estate's interaction with Zaentz concerning this 10:03:24

20 book Magical Worlds of -- Worlds of Lord of the 10:03:26

21 Rings, is that the Class 16 issue on which you wound 10:03:28

22 up being focused? 10:03:33

23 MS. ESKENAZI: Objection. Vague and 10:03:33

24 ambiguous. Document speaks for itself. Lacks 10:03:36

25 foundation. Calls for speculation. 10:03:39

1 THE WITNESS: Well, as I sit here today, 10:03:41
2 I'd have to consider this paragraph in detail if 10:03:43
3 you're asking me if it's an accurate statement. It 10:03:47
4 certainly references that issue. 10:03:49
5 BY MR. ULIN: 10:03:49
6 Q. Okay. Ms. Blackburn writes that the 10:03:54
7 Estate's reliance on the titles as trademarks in the 10:04:01
8 context of publishing rights wouldn't conflict with 10:04:03
9 Zaentz's use of its rights because the -- the goods 10:04:07
10 that Zaentz produces in Class 16 don't overlap with 10:04:12
11 the Estate's publishing activity. 10:04:16
12 Do you see that? 10:04:18
13 A. I see that sentence, yeah. 10:04:18
14 Q. You're aware that Zaentz licenses Class 10:04:21
15 16 -- goods in Class 16, right? 10:04:26
16 A. That use primarily film art, I believe 10:04:30
17 that's right. 10:04:32
18 Q. Okay. And -- and the Estate licenses -- 10:04:33
19 also licenses goods in Class 16, correct? 10:04:38
20 MS. ESKENAZI: Objection. Vague and 10:04:45
21 ambiguous. 10:04:47
22 THE WITNESS: The Estate's rights relate to 10:04:47
23 all publishing in Class 16, other than that limited 10:04:51
24 carve-out for Zaentz, yes. 10:04:53
25 BY MR. ULIN: 10:04:53

1 Q. And broadly speaking, both the Estate and 10:04:58
2 Zaentz are permitted to license goods in Class 16 10:04:59
3 within their respective scopes of rights, correct? 10:05:06

4 A. Well, I'm -- 10:05:10

5 MS. ESKENAZI: Objection. Calls for a 10:05:11
6 legal conclusion. Vague and ambiguous. 10:05:13

7 THE WITNESS: I'm -- I'm not sure if 10:05:15
8 "broadly speaking" would be a correct 10:05:17
9 characterization, because the Estate has massive 10:05:19
10 publishing activity and has had for decades, as 10:05:22
11 opposed to the very small carve-out for books of 10:05:26
12 film art. 10:05:29

13 BY MR. ULIN: 10:05:29

14 Q. Okay. But leaving aside the phrase 10:05:30
15 "broadly speaking," both the Estate and Zaentz are 10:05:32
16 entitled to license goods within Class 16, correct? 10:05:35

17 A. Zaentz -- 10:05:43

18 MS. ESKENAZI: Objection. Calls for a 10:05:43
19 legal conclusion. 10:05:46

20 BY MR. ULIN: 10:05:46

21 Q. This is just -- this is just a "yes" or 10:05:46
22 "no" question. 10:05:50

23 A. Zaentz is entitled to license books that 10:05:50
24 use film art, primarily. 10:05:52

25 Q. And not just books, other goods within 10:05:53

1 Class 16 as well, correct? 10:05:55

2 A. I'd need to review the contracts to express 10:05:59

3 a view on that. 10:06:02

4 Q. Okay. We'll come back to it. 10:06:02

5 In the second-to-the-last paragraph on 10:06:04

6 page 2 of her letter, Ms. Blackburn proposes that 10:06:25

7 the Estate take an assignment or an exclusive 10:06:32

8 license in the rights to use titles -- the titles as 10:06:36

9 trademarks so that it can pursue enforcement 10:06:38

10 concerning The Magical World of Lord of the Rings. 10:06:40

11 Do you see that? 10:06:42

12 A. I see that. 10:06:43

13 Q. Do you know if that happened at that time? 10:06:51

14 A. I don't believe it did. 10:06:53

15 Q. And this letter does not raise an objection 10:06:56

16 to Zaentz having registered trademarks in Class 16, 10:07:09

17 does it? 10:07:16

18 MS. ESKENAZI: Objection. The document 10:07:16

19 speaks for itself. Legal -- calls for a legal 10:07:20

20 conclusion. 10:07:24

21 THE WITNESS: Well, I think it does. 10:07:25

22 BY MR. ULIN: 10:07:25

23 Q. Is Ms. Blackburn saying that -- anywhere in 10:07:30

24 this letter that it -- Zaentz did not properly 10:07:33

25 register its trademarks in Class 16? 10:07:39

1 MS. ESKENAZI: Objection. Asked and 10:07:42
2 answered. 10:07:43

3 THE WITNESS: Well, she refers to the 10:07:44
4 problem of the Zaentz registrations. 10:07:45

5 BY MR. ULIN: 10:07:45

6 Q. She refers to an issue of the effect of the 10:07:53
7 registrations on the Estate's ability to enforce 10:07:55
8 its -- its rights in the titles, correct? 10:08:02

9 MS. ESKENAZI: Objection. Vague and 10:08:04
10 ambiguous. Document speaks for itself. 10:08:05

11 BY MR. ULIN: 10:08:05

12 Q. You may answer. 10:08:08

13 MS. ESKENAZI: Calls for a legal 10:08:08
14 conclusion. 10:08:09

15 THE WITNESS: I think you're going to have 10:08:09
16 to let me read the whole letter if you want me to 10:08:11
17 comment any further on it. But in any event, it's 10:08:14
18 Ms. Blackburn's letter. 10:08:16

19 BY MR. ULIN: 10:08:16

20 Q. Okay. Did you review this letter before it 10:08:18
21 was sent? 10:08:20

22 A. No. 10:08:20

23 Q. Did you discuss the letter -- this letter 10:08:27
24 with Ms. Blackburn? 10:08:29

25 MS. ESKENAZI: Objection. Attorney-client 10:08:31

1 privilege. Instruct not to answer. 10:08:33

2 MR. ULIN: The fact of whether he discussed 10:08:35

3 it? 10:08:36

4 MS. ESKENAZI: Of this letter? Yes. 10:08:36

5 That's a communication between the lawyers about the 10:08:40

6 particular -- 10:08:43

7 MR. ULIN: Right. I'm just asking about 10:08:44

8 the fact of the communication. I'm not asking what 10:08:46

9 was said, though. 10:08:48

10 MS. ESKENAZI: To the extent that -- to the 10:08:48

11 extent that you'll agree that this is not a waiver 10:08:53

12 of the attorney-client privilege -- 10:08:54

13 MR. ULIN: That's agreed. 10:08:55

14 MS. ESKENAZI: -- I will allow him to 10:08:56

15 answer "yes" or "no." 10:08:57

16 THE WITNESS: I have no recollection of 10:09:01

17 seeing or discussing this letter at any time. 10:09:02

18 BY MR. ULIN: 10:09:02

19 Q. Fair enough. Let's go off the record. 10:09:05

20 THE VIDEOGRAPHER: This is the end of media 10:09:10

21 number 1. Off the record at 10:09 a.m. 10:09:12

22 (Brief recess.) 10:17:20

23 THE VIDEOGRAPHER: We are back on the 10:24:10

24 record at 10:24 a.m. This is the beginning of media 10:24:12

25 number 2. Counsel may proceed. 10:24:14

1 MR. ULIN: I'm just going to note for the 10:24:15
2 record that the document that we marked as Exhibit 10:24:17
3 24 had previously been marked as Exhibit 20 in 10:24:19
4 Ms. Blackburn's deposition, so we're going to use 10:24:23
5 the Exhibit 20 as the document for the record in 10:24:25
6 this deposition and we will -- we have unmarked 10:24:29
7 number 24 and we'll use that number for the next 10:24:33
8 exhibit, which I'll mark right now. 10:24:37

9 MS. ESKENAZI: Okay. 10:24:42

10 (The document referred to was 10:24:42
11 marked for identification as 10:24:42
12 Exhibit 24 and attached to this 10:24:42
13 deposition.) 10:24:52

14 MR. ULIN: This document I'll note for the 10:24:52
15 record was -- 10:24:57

16 THE REPORTER: Wait. Wait. Thank you. 10:24:57

17 MS. ESKENAZI: Now you can speak. 10:24:57

18 MR. ULIN: Sorry. Good point. 10:24:57

19 This document I'll note for the record was 10:24:58
20 not produced, and that was inadvertent on our part. 10:25:01
21 You'll note that there's a redacted portion at the 10:25:04
22 top, which is an e-mail which lead our coders to 10:25:06
23 believe that this was privileged, which it's not, 10:25:09
24 and we will produce it. 10:25:10

25 MS. ESKENAZI: Well, I'm going to object to 10:25:11

1 him answering substantive questions about a document 10:25:18
2 that has not previously been produced. I understand 10:25:20
3 you're going to ask the questions anyway, but -- 10:25:22
4 MR. GLICK: Do you want to take a minute 10:25:26
5 and read it? 10:25:27
6 MS. ESKENAZI: Sure. 10:25:28
7 MR. PETROCELLI: This is Exhibit 24? 10:25:51
8 MR. ULIN: Yes, this is now Exhibit 24. 10:25:51
9 Q. Mr. Maier, have you seen Exhibit 24 before? 10:26:53
10 A. I have no recollection of this but I see 10:26:56
11 that it has my name on it. 10:27:02
12 Q. It appears to be an e-mail from you to 10:27:03
13 Annette Hurst of the Howard Rice firm from May 10:27:06
14 the 7th, 2002. 10:27:11
15 Do you see that? 10:27:12
16 A. Yeah. 10:27:22
17 Q. And you know that Ms. Hurst was outside 10:27:23
18 counsel for the Saul Zaentz Company at that time? 10:27:25
19 A. I believe that's right, yes. 10:27:27
20 Q. And you worked with -- you worked with 10:27:28
21 Ms. Hurst a number of times over the years, correct? 10:27:29
22 A. No. 10:27:32
23 Q. No? Do you have -- you did have 10:27:32
24 correspondence and interaction with her related to 10:27:34
25 Saul Zaentz matters? 10:27:37

1 MS. ESKENAZI: Objection. Vague and 10:27:42
2 ambiguous. 10:27:43

3 THE WITNESS: I -- I don't recall to what 10:27:43
4 extent I spoke or e-mailed with her. 10:27:44

5 BY MR. ULIN: 10:27:44

6 Q. Fair enough. You note at the beginning of 10:27:46
7 your e-mail, which is at the bottom of the first 10:27:56
8 page of Exhibit 24, that Ms. Blackburn forwarded you 10:27:58
9 a note from Ms. Hurst because you are the person who 10:28:03
10 deals with litigious matters on behalf of the 10:28:06
11 Tolkien Estate. 10:28:10

12 Do you see that? 10:28:11

13 A. It's what it says, yeah. 10:28:11

14 Q. Is this your first involvement with -- a 10:28:12
15 number of things I want to ask about. 10:28:19

16 Is this your first involvement with Tolkien 10:28:22
17 Estate matters? 10:28:24

18 A. I don't recall. 10:28:24

19 Q. Is this your first interaction with the 10:28:24
20 Saul Zaentz Company? 10:28:29

21 A. I don't recall. 10:28:29

22 Q. As you sit here today, can you recall any 10:28:34
23 interactions with the Saul Zaentz Company that 10:28:36
24 predated the dispute over The Magical Worlds of Lord 10:28:38
25 of the Rings? 10:28:43

1 A. As I sit here today, I can't recall. 10:28:43

2 Q. Okay. Is this your first involvement with 10:28:50

3 what you described as the Class 16 issues as between 10:28:54

4 the Estate and Zaentz? 10:28:58

5 MS. ESKENAZI: Objection. Asked and 10:29:03

6 answered. 10:29:03

7 THE WITNESS: Again, I can't recall. 10:29:03

8 BY MR. ULIN: 10:29:03

9 Q. At the second page of your e-mail, in the 10:29:28

10 middle of the page you suggest that of immediate 10:29:32

11 concern is the present stage of the trademark 10:29:36

12 registration in Class 16, correct? 10:29:40

13 MS. ESKENAZI: Objection. Document speaks 10:29:47

14 for itself. 10:29:49

15 THE WITNESS: Yeah, I can't add to what it 10:29:49

16 says there. 10:29:50

17 BY MR. ULIN: 10:29:50

18 Q. Okay. But what it says there is that 10:29:52

19 you're focused on the status of the Class 16 10:29:55

20 trademark registrations by Zaentz, correct? 10:30:00

21 A. It says: 10:30:02

22 "One" -- "One issue of 10:30:03

23 immediate concern is the present 10:30:04

24 status of the trademark 10:30:07

25 registration." 10:30:08

1 Q. Okay. And you are -- so you are raising in 10:30:23
2 this note, if I understand it correctly, the scope 10:30:25
3 of Zaentz's Class 16 registrations; is that correct? 10:30:27

4 MS. ESKENAZI: Objection. Document speaks 10:30:32
5 for itself. 10:30:33

6 THE WITNESS: I don't have a recollection 10:30:34
7 of this e-mail so I can't tell you what was in my 10:30:36
8 mind at that time. 10:30:40

9 BY MR. ULIN: 10:30:40

10 Q. Do you have a recollection of interacting 10:30:40
11 with Zaentz about the scope of its Class 16 10:30:42
12 registrations in or around 2002? 10:30:47

13 A. In general terms, yes, but I can't be 10:30:49
14 precise as to the date. 10:30:53

15 Q. Okay. And that was in connection with the 10:30:55
16 Estate's efforts to enforce concerning The Magical 10:30:56
17 Worlds of Lord of the Rings book, correct? 10:31:02

18 A. Correct. 10:31:03

19 Q. Okay. You acknowledge in the next 10:31:10
20 paragraph of this e-mail that the Estate has, in 10:31:12
21 your words, acted passively in the past with regard 10:31:15
22 to trademark registrations. 10:31:20

23 Do you see that? 10:31:21

24 A. I see that sentence. 10:31:21

25 Q. Okay. What do you mean by that? 10:31:24

1 MS. ESKENAZI: Objection. Relevance. 10:31:27

2 Document speaks for itself. 10:31:31

3 THE WITNESS: Well, what it appears to mean 10:31:41

4 is that the state -- the Estate has not had to be 10:31:43

5 involved with trademark issues, other than relate to 10:31:44

6 books. 10:31:47

7 BY MR. ULIN: 10:31:47

8 Q. Okay. And can you explain further what you 10:31:50

9 meant by that at that time? 10:31:56

10 A. I can't because -- 10:31:58

11 MS. ESKENAZI: Same objections. 10:31:59

12 THE WITNESS: -- I have no recollection of 10:32:00

13 the document. 10:32:01

14 BY MR. ULIN: 10:32:01

15 Q. Fair enough. You note that: 10:32:02

16 "The CTM registration insofar 10:32:12

17 as it applies to books in Class 16 10:32:16

18 is one which would appear to 10:32:17

19 clearly relate to existing rights 10:32:19

20 reserved by the Estate." Correct? 10:32:23

21 A. That's what it says. 10:32:25

22 Q. What do you mean by "the CTM registration"? 10:32:25

23 MS. ESKENAZI: Objection. Relevance. 10:32:28

24 Vague and ambiguous. 10:32:30

25 THE WITNESS: It's a community trademark, a 10:32:31

1 European trademark. 10:32:34

2 BY MR. ULIN: 10:32:34

3 Q. So the registration in the European Union, 10:32:34

4 correct? 10:32:34

5 A. Yeah. 10:32:39

6 Q. And if I understand your objection here, it 10:32:42

7 is that a Class 16 registration by Zaentz has 10:32:46

8 extended into rights reserved by the Estate in its 10:32:51

9 contracts with Zaentz; is that correct? 10:32:54

10 A. That's what the sentence appears to say, 10:32:57

11 yes. 10:32:57

12 Q. And that's affecting the Estate's ability 10:33:02

13 to enforce its trademark rights with respect to the 10:33:04

14 author and publisher of the -- of the infringing 10:33:08

15 book, correct? 10:33:11

16 A. No, with regard to the title of the 10:33:16

17 infringing book. 10:33:19

18 Q. With regard to the title of the infringing 10:33:20

19 book. Okay. 10:33:23

20 And that is the same objection that the 10:33:23

21 Estate's raising in this case with respect to Class 10:33:27

22 16, correct? 10:33:30

23 MS. ESKENAZI: Objection. Calls for a 10:33:31

24 legal conclusion. 10:33:33

25 THE WITNESS: The objection that the Estate 10:33:33

1 is raising, one of the objections that the Estate is 10:33:36

2 raising in this lawsuit, is to Zaentz's 10:33:39

3 registrations for books in Class 16. 10:33:42

4 BY MR. ULIN: 10:33:42

5 Q. And that's the same objection that 10:33:46

6 is articulated -- that you articulate in your e-mail 10:33:51

7 to Ms. Hurst of May 7, 2002, correct? 10:33:53

8 MS. ESKENAZI: Objection. Calls for a 10:33:58

9 legal conclusion. 10:33:59

10 THE WITNESS: I'm not exactly sure what you 10:33:59

11 mean by "the same objection." 10:34:02

12 BY MR. ULIN: 10:34:02

13 Q. Your -- 10:34:03

14 A. It's -- it's a similar objection but on 10:34:04

15 different occasions. I -- I think that -- 10:34:06

16 Q. Okay. But the -- the point that you're 10:34:09

17 making in the e-mail to Ms. Hurst relates to -- is 10:34:10

18 that -- is to -- is to the breadth of Zaentz's 10:34:29

19 registration for trademarks and books in Class 16, 10:34:32

20 correct? 10:34:32

21 A. Well, I think the objection that's being 10:34:39

22 made here is to the fact of Zaentz's registrations 10:34:40

23 in Class 16. 10:34:42

24 Q. Okay. You also again -- not again. You 10:34:51

25 also suggest, as Ms. Blackburn did, that Zaentz 10:35:17

1 grant the Estate an assignment or exclusive license 10:35:21

2 limited to books in Class 16, right? 10:35:25

3 MS. ESKENAZI: Objection. Vague and 10:35:27

4 ambiguous. 10:35:28

5 THE WITNESS: Sorry. Can you show me where 10:35:28

6 that is? 10:35:30

7 BY MR. ULIN: 10:35:30

8 Q. Sure. 10:35:31

9 A. I see it. I see it. 10:35:36

10 Q. Thank you. I was just about to point it to 10:35:38

11 you, but it's in that second-to-last substantive 10:35:40

12 paragraph on page 2. 10:35:42

13 A. Yeah, it says, "we had contemplated an 10:35:47

14 assignment or exclusive license." 10:35:49

15 Q. Okay. Was there an assignment or license 10:35:51

16 granted? 10:35:55

17 A. I don't believe so. 10:35:56

18 MR. ULIN: Let's mark Exhibit 25. 10:36:06

19 (The document referred to was 10:36:07

20 marked for identification as 10:36:07

21 Exhibit 25 and attached to this 10:36:07

22 deposition.) 10:37:04

23 THE WITNESS: Okay. I've read that. 10:37:04

24 BY MR. ULIN: 10:37:04

25 Q. Okay. And have you seen Exhibit 5 10:37:06

1 before -- excuse me, Exhibit 25 before? 10:37:07

2 A. I have no recollection of this -- this 10:37:09

3 e-mail. 10:37:13

4 Q. But you don't have any reason to believe 10:37:13

5 that you did not actually receive this e-mail from 10:37:15

6 Ms. Hurst on or about May 15, 2002? 10:37:18

7 MS. ESKENAZI: Objection. Misstates the 10:37:24

8 document. And vague and ambiguous. 10:37:25

9 THE WITNESS: It's the other way around. 10:37:28

10 It appears to be from me to -- 10:37:29

11 BY MR. ULIN: 10:37:29

12 Q. Correct. I did misstate the document. 10:37:31

13 A. But I have -- I have no reason to think 10:37:33

14 that I didn't send it. 10:37:35

15 Q. Okay. You refer to a conversation that you 10:37:36

16 had with Ms. Hurst on the telephone the preceding 10:37:42

17 Friday. 10:37:48

18 Do you see that? 10:37:49

19 A. Yes. 10:37:49

20 Q. Do you remember that telephone 10:37:50

21 conversation? 10:37:51

22 A. No. 10:37:51

23 Q. Do you recall what was discussed? 10:37:54

24 A. No. 10:37:55

25 Q. In your e-mail, you indicate that Ms. Hurst 10:38:04

1 explained the reason why certain goods, e.g., books 10:38:07
2 in Class 16 had been included in the current CTM 10:38:13
3 application. 10:38:16

4 Do you see that? 10:38:17

5 A. Yeah. 10:38:17

6 Q. Do you recall what she told you about that? 10:38:19

7 A. No. 10:38:21

8 Q. Leaving aside any specific conversation 10:38:37
9 that you may or may not recall, do you recall, 10:38:39
10 generally, conversations about Class 16 rights in 10:38:44
11 books surrounding the enforcement concerning The 10:38:49
12 Magical World of Lord of the Rings book? 10:38:57

13 MS. ESKENAZI: Objection. 10:38:57

14 THE WITNESS: I don't recall any of that, 10:38:59
15 no. 10:38:59

16 BY MR. ULIN: 10:38:59

17 Q. You don't recall conversations generally 10:39:00
18 with Zaentz or Zaentz's lawyers, even if you can't 10:39:01
19 recall a specific conversation? 10:39:03

20 A. About The Magical Worlds issue? 10:39:05

21 Q. About the Class 16 issues in connection 10:39:07
22 with Magical World? 10:39:09

23 A. No, I don't recall. 10:39:09

24 MS. ESKENAZI: Objection. It's vague and 10:39:10
25 ambiguous. 10:39:10

1 BY MR. ULIN: 10:39:30

2 Q. Is it correct that you sought advice from 10:39:30

3 the Estate's barrister in connection with enforc- -- 10:39:33

4 potential enforcement proceedings in response to The 10:39:39

5 Magical Worlds book? 10:39:43

6 MS. ESKENAZI: Well, I'm going to object as 10:39:44

7 to attorney-client privileged communications. I 10:39:46

8 will let -- if you'll stipulate that it's not a 10:39:53

9 waiver, I will allow this witness to say "yes" or 10:39:55

10 "no" to the subject matter of the discussions. 10:40:00

11 MR. ULIN: I will. And I have a document 10:40:02

12 which I think will allow us to move past the 10:40:05

13 attorney-client objections but we'll get to that in 10:40:07

14 a moment. 10:40:09

15 THE WITNESS: Well, you referred to the 10:40:09

16 Estate's barrister. I'm not aware of anyone that 10:40:11

17 meets that description. 10:40:15

18 BY MR. ULIN: 10:40:15

19 Q. Do you know who Richard Arnold QC is? 10:40:18

20 A. Yes, I do. 10:40:21

21 Q. Okay. Who is he? 10:40:22

22 A. He used to be a barrister. He's now a 10:40:22

23 judge. 10:40:30

24 Q. And does the "QC" designation indicate that 10:40:30

25 he was acting as a barrister if those letters follow 10:40:35

1 his name? 10:40:39

2 A. No. A QC is a designation for a senior 10:40:39

3 barrister, what's called leading counsel as opposed 10:40:42

4 to junior counsel. It's -- Queen's Counsel is what 10:40:45

5 the letters stand for. 10:40:48

6 Q. Do you recall consulting with Mr. Arnold 10:40:50

7 concerning enforcement arising from The Magical 10:40:56

8 Worlds book? 10:41:04

9 MS. ESKENAZI: Same objection. Again, it's 10:41:04

10 an attorney-client privileged communication. And to 10:41:08

11 the extent I have a stipulation that his answering 10:41:12

12 this one question will not waive that 10:41:14

13 attorney-client privilege, I'll allow him to answer 10:41:16

14 the question. 10:41:19

15 MR. ULIN: That's fine. 10:41:19

16 THE WITNESS: I have a recollection of a 10:41:20

17 conference with a barrister at some time that may 10:41:26

18 have been Richard Arnold, but I don't really recall. 10:41:29

19 BY MR. ULIN: 10:41:29

20 Q. Okay. And you -- you wrote instructions to 10:41:32

21 the barrister for -- with relation to issues that 10:41:36

22 you wanted to discuss, correct? 10:41:39

23 A. I don't recall. 10:41:41

24 MS. ESKENAZI: Same stipulation? 10:41:41

25 MR. ULIN: Yes, and I think I've got the 10:41:42

1 answer, but yes. 10:41:44

2 Q. And you did, in fact, meet with the -- with 10:41:47

3 the barrister in connection with The Magical Worlds 10:41:49

4 enforcement, correct? 10:41:55

5 MS. ESKENAZI: Again, same stipulation. 10:41:56

6 THE WITNESS: I don't recall. 10:41:57

7 (Pages 78 through 91 are
8 marked confidential and are bound
9 under separate cover. The
10 nonconfidential portion of this
11 transcript continues on page 92.)
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1 MR. ULIN: Obviously we disagree and we'll 11:01:27
2 contest this and we think it is -- not only are we 11:01:28
3 right, but it's going to be a basis for Mr. Maier 11:01:31
4 having to return to Los Angeles for further 11:01:33
5 deposition. 11:01:35

6 MS. ESKENAZI: We disagree. 11:01:35

7 BY MR. ULIN: 11:01:35

8 Q. During -- let me start the question again. 11:02:10

9 Do you recall a dispute arising during 2003 11:02:15
10 concerning the German publisher Klett-Cotta's 11:02:18
11 registration of trademarks in The Lord of the Rings 11:02:21
12 title in Germany? 11:02:24

13 A. No. 11:02:25

14 MR. ULIN: Mark Exhibit 28 and put it 11:02:31
15 before the witness. 11:02:38

16 (The document referred to was 11:02:38
17 marked for identification as 11:02:38
18 Exhibit 28 and attached to this 11:02:38
19 deposition.) 11:03:32

20 MR. PETROCELLI: Number 28? 11:03:32

21 MR. ULIN: Yes. 11:04:25

22 Q. Mr. Maier, have you seen Exhibit 28 before? 11:04:25

23 MS. ESKENAZI: Have you finished reading 11:04:27
24 it? 11:04:29

25 THE WITNESS: I haven't finished reading 11:04:29

1 it. 11:04:31

2 Would you like me to finish reading it? 11:04:33

3 BY MR. ULIN: 11:04:34

4 Q. Yeah, I can tell you, I'm not going to be 11:04:42

5 examining you on the substance of the attached 11:04:46

6 letter. 11:04:47

7 A. Well, I've read the -- the e-mail at the 11:04:50

8 beginning of the exhibit. 11:04:54

9 Q. Fair enough. Does Exhibit 28 refresh your 11:04:55

10 recollection with respect to a dispute concerning 11:05:02

11 Klett-Cotta? 11:05:05

12 A. No, it does not. 11:05:07

13 Q. In -- and there's -- I may have asked you 11:05:08

14 this. This may be a form of a question I've asked 11:05:16

15 you, but I just want to clarify. 11:05:19

16 Do you have any recollection at all of a 11:05:21

17 dispute involving trademark rights and the German 11:05:22

18 firm Klett-Cotta? 11:05:26

19 A. I don't recall. 11:05:28

20 MS. ESKENAZI: Objection. Asked and 11:05:29

21 answered. 11:05:29

22 BY MR. ULIN: 11:05:37

23 Q. In your e-mail to Ms. Hurst on Friday, 11:05:37

24 October the 24th, 2003, you indicate to her in the 11:05:41

25 fourth paragraph that it is and remains the Estate's 11:05:45

1 position that Zaentz should not have registered 11:05:50
2 trademarks for books in Class 16, and that all such 11:05:53
3 registrations should properly be held by the Estate; 11:05:57
4 is that correct? 11:06:05
5 MS. ESKENAZI: Objection. Vague and 11:06:05
6 ambiguous. Document speaks for itself. 11:06:07
7 THE WITNESS: Well, I agree that's what it 11:06:09
8 says. 11:06:11
9 BY MR. ULIN: 11:06:11
10 Q. Okay. And that is the same position that 11:06:12
11 the Estate is asserting in this case, correct? 11:06:20
12 MS. ESKENAZI: Objection. Calls for a 11:06:23
13 legal conclusion. 11:06:25
14 THE WITNESS: It relates to the same issue. 11:06:25
15 BY MR. ULIN: 11:06:25
16 Q. And the position that Zaentz should not 11:06:28
17 have registered trademarks for books in Class 16 is 11:06:30
18 the same position that's being taken in this 11:06:34
19 litigation, correct? 11:06:36
20 MS. ESKENAZI: Same objection. 11:06:37
21 THE WITNESS: It relates to the same issue 11:06:38
22 in this litigation. 11:06:39
23 BY MR. ULIN: 11:06:39
24 Q. What do you mean by that when you say, "it 11:06:41
25 relates to the same issue"? 11:06:42

1 A. Well, I don't have the complaint in front 11:06:44
2 of me and I can't compare the language in this 11:06:46
3 paragraph with the language in the complaint. But 11:06:48
4 there is an issue concerning Zaentz's registrations 11:06:50
5 of trademarks for books in Class 16, I agree. 11:06:53

6 Q. And you are raising that issue here in your 11:06:56
7 e-mail to Ms. Hurst in October of 2003, correct? 11:06:58

8 A. That appears to be what this document says, 11:07:05
9 yeah. 11:07:05

10 Q. And that -- that's -- that -- that same 11:07:07
11 issue is raised by the Estate in this litigation, 11:07:09
12 correct? 11:07:09

13 MS. ESKENAZI: Asked and answered. Same 11:07:13
14 objections. Calls for a legal conclusion. 11:07:15

15 THE WITNESS: Well, as I've just said to 11:07:17
16 you, it relates to the same issue. I'm not sure 11:07:19
17 that the wording is identical to the complaint in 11:07:21
18 this litigation. 11:07:25

19 BY MR. ULIN: 11:07:25

20 Q. Okay. Would you agree, then, that your 11:07:46
21 e-mail to Ms. Hurst is one in which you state 11:07:48
22 objections relating to the same Class 16 issue at 11:07:54
23 issue in this case, only that you state it -- only 11:07:57
24 stating those objections ten years ago? 11:08:03

25 MS. ESKENAZI: Objection. Vague and 11:08:05

1 | ambiguous. Calls for a legal conclusion. 11:08:07

2 THE WITNESS: I would agree that this 11:08:09

3 e-mail appears to refer to an objection to Zaentz 11:08:11

4 | having registered books in Class 16. 11:08:15

5 BY MR. ULIN: 11:08:15

6 Q. Okay. And one that you made -- one that 11:08:17

7 | you made on behalf of the Estate, correct? 11:08:19

8 MS. ESKENAZI: Same objections. 11:08:22

9 THE WITNESS: As I sit here I have no 11:08:22

10	recollection of this e-mail, but that's what appears	11:08:26
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11	to be the case.	11:08:28
----	-----------------	----------

12 BY MR. ULIN: 11:08:29

13 Q. Okay. And the one that you made on behalf 11:08:29

14 of the Estate ten years ago, correct? 11:08:31

15	MS. ESKENAZI: Same objections and asked	11:08:33
----	---	----------

16	and answered.	11:08:34
----	---------------	----------

17	THE WITNESS: The e-mail dates from ten	11:08:35
----	--	----------

18	years ago.	11:08:37
----	------------	----------

19 BY MR. ULIN: 11:08:37

20 Q. Okay. You indicate in the next paragraph 11:08:47

21	that:	11:08:48
----	-------	----------

22	"It's the Estate that takes	11:08:48
----	-----------------------------	----------

23	legal action worldwide in respect	11:08:49
----	-----------------------------------	----------

24 of counterfeit books." 11:08:51

25	Do you see that?	11:08:52
----	------------------	----------

1 A. I do see that. 11:08:53

2 Q. Is that correct? 11:08:53

3 A. I'm certainly aware of a number of cases 11:08:54

4 that the Estate has taken in various jurisdictions 11:09:01

5 in respect of counterfeit books. 11:09:03

6 Q. On how many occasions has the Estate taken 11:09:05

7 action with respect to counterfeit books, to your 11:09:15

8 knowledge? 11:09:19

9 A. I don't recall. 11:09:19

10 Q. Can you estimate? 11:09:19

11 A. Are you asking about matters in which I've 11:09:20

12 been personally involved? 11:09:25

13 Q. I'm asking about matters of which you are 11:09:27

14 aware. 11:09:29

15 A. I can't estimate. 11:09:37

16 Q. More than five? 11:09:37

17 A. I believe so. 11:09:40

18 Q. More than ten? 11:09:40

19 A. Possibly. 11:09:41

20 Q. More than 20? 11:09:44

21 A. I would doubt it's more than 20 but it may 11:09:44

22 be. 11:09:50

23 Q. More than 30? 11:09:51

24 A. I don't think so. 11:09:54

25 Q. Somewhere in the vicinity of 20. Is that 11:09:57

1 fair? 11:09:57

2 A. I can't be any more specific. 11:10:00

3 Q. Okay. And the issues concerning Class 16 11:10:01

4 have not prevented the Estate from taking those 11:10:08

5 enforcement actions, correct? 11:10:11

6 A. Well, in many -- 11:10:13

7 MS. ESKENAZI: Objection. Vague and 11:10:14

8 ambiguous. 11:10:16

9 THE WITNESS: In many cases, the principal 11:10:16

10 action is for infringement of copyright so the Class 11:10:19

11 16 issue isn't engaged. 11:10:23

12 BY MR. ULIN: 11:10:23

13 Q. But in other cases the infringement issue 11:10:38

14 relates to trademark, correct? 11:10:41

15 A. Well, we're speaking hypothetically here 11:10:47

16 because I'm not sure exactly which cases you're 11:10:48

17 talking about. 11:10:50

18 Q. Well, we're speaking in generalities. I 11:10:51

19 don't think we're speaking hypothetically. 11:10:53

20 A. Okay. 11:10:55

21 Q. Are you aware of cases in which the 11:10:55

22 Estate's counterfeit enforcement has been based on 11:10:56

23 its trademark rights -- 11:10:59

24 MS. ESKENAZI: Objection. Vague and 11:11:00

25 ambiguous. 11:11:02

1 BY MR. ULIN: 11:11:02

2 Q. -- as relates to counterfeit books? 11:11:04

3 A. I can't recall any cases in which -- other 11:11:07

4 than the one you've reminded me about, The Magical 11:11:15

5 Worlds, where there was a trademark issue without a 11:11:19

6 copyright issue. 11:11:23

7 MR. ULIN: Let's mark Exhibit 29. 11:11:30

8 (The document referred to was 11:11:31

9 marked for identification as 11:11:31

10 Exhibit 29 and attached to this 11:11:31

11 deposition.) 11:12:32

12 BY MR. ULIN: 11:12:32

13 Q. Mr. Blackburn -- "Mr. Blackburn." 11:13:02

14 Mr. Maier, do you recall the e-mail 11:13:04

15 exchange contained in Exhibit 29? 11:13:06

16 A. No. 11:13:09

17 Q. The first e-mail -- well, actually, the 11:13:13

18 second e-mail reflected in Exhibit 29 appears to be 11:13:17

19 one from you to Annette Hurst dated on or about the 11:13:20

20 6th of November 2003. 11:13:23

21 Do you see that? 11:13:25

22 A. I see that. 11:13:25

23 Q. And it relates to the resolution of the 11:13:26

24 matter concerning Klett-Cotta, correct? 11:13:29

25 A. It starts off by reference to the 11:13:37

1 resolution of that matter, yes. 11:13:38

2 Q. Does this refresh -- refresh your 11:13:42

3 recollection at all with respect to that dispute? 11:13:43

4 A. Not at all. 11:13:44

5 Q. And you don't -- do you have any 11:13:46

6 recollection one way or another whether the dispute 11:13:48

7 was resolved by Klett-Cotta assigning a trademark 11:13:49

8 registration in -- in The Lord of the Rings title to 11:13:55

9 Zaentz? 11:13:59

10 A. No recollection whatsoever. 11:13:59

11 Q. You don't recall one way or the other how 11:14:02

12 the case was resolved, you don't recall the case at 11:14:04

13 all, correct? 11:14:07

14 A. That's correct. 11:14:07

15 Q. At the second page of Exhibit 29, you write 11:14:09

16 to Ms. Hurst: 11:14:15

17 "As between the Estate and 11:14:16

18 SZC, however, I would reiterate 11:14:18

19 that the Estate maintains it is 11:14:20

20 entitled to ownership of all 11:14:21

21 relevant trademarks so far as 11:14:23

22 books in Class 16 are concerned." 11:14:24

23 Do you see that? 11:14:28

24 A. I see that. 11:14:28

25 Q. Is that an accurate reflection of the 11:14:29

1 Estate's position with respect to Class 16 rights in 11:14:32

2 books as of November of 2003? 11:14:34

3 A. Well, it appears to reflect the Estate's 11:14:48

4 view as of that date. 11:14:50

5 Q. And the -- as expressed by you to counsel 11:14:51

6 for Zaentz, correct? 11:14:54

7 A. That would be correct, yes. 11:14:59

8 Q. And you further indicate, then, that the 11:15:08

9 Estate considers Zaentz to be holding all relevant 11:15:10

10 Class 16 registrations and books in trust for the 11:15:15

11 Estate, correct? 11:15:18

12 A. That's what it says. 11:15:22

13 Q. Okay. And that the same would apply to any 11:15:23

14 German mark or registration that Klett-Cotta assigns 11:15:27

15 to Zaentz, correct? 11:15:31

16 A. If that's what the reference to the German 11:15:38

17 mark means, then, yeah. That's what it appears to 11:15:39

18 be, yeah. 11:15:44

19 Q. Okay. And then you indicate that that 11:15:45

20 would be pending assignment. 11:15:46

21 Was there an assignment of the Klett-Cotta 11:15:49

22 application by Zaentz to the Estate? 11:15:53

23 MS. ESKENAZI: Objection. Misstates the 11:15:55

24 document. 11:15:57

25 THE WITNESS: I don't know. 11:15:59

1 BY MR. ULIN: 11:15:59

2 Q. Do you know whether the Estate took any 11:16:06

3 action to secure an assignment of the Klett-Cotta 11:16:08

4 trademark application from Zaentz? 11:16:12

5 A. I don't recall. 11:16:14

6 Q. As you sit here today, you can't recall the 11:16:17

7 Estate taking any action with respect to securing an 11:16:20

8 assignment of that registration? 11:16:23

9 MS. ESKENAZI: Objection. Vague and 11:16:24

10 ambiguous. 11:16:24

11 BY MR. ULIN: 11:16:24

12 Q. Is that correct? 11:16:24

13 A. That is correct. 11:16:26

14 MR. ULIN: Let's mark Exhibit 30. 11:16:43

15 Q. Before I mark Exhibit 30, do you recall a 11:16:48

16 dispute concerning a product called The Hobbit 11:16:49

17 calendar? 11:16:51

18 A. No. 11:16:52

19 MR. ULIN: Let's mark Exhibit 30. 11:16:54

20 (The document referred to was 11:17:06

21 marked for identification as 11:17:06

22 Exhibit 30 and attached to this 11:17:06

23 deposition.) 11:18:10

24 BY MR. ULIN: 11:18:10

25 Q. Mr. Maier, have you seen the e-mail 11:18:10

1 exchange in Exhibit 30 before? 11:18:12

2 A. I haven't finished reading it but I have no 11:18:13

3 recollection of seeing this e-mail exchange before. 11:18:17

4 Q. Ms. Blackburn notes in her e-mail to -- 11:18:19

5 well, let me ask a different question. 11:18:42

6 The top e-mail is one from Ms. Blackburn to 11:18:43

7 Laurie Battle. 11:18:50

8 Do you know who Laurie Battle is? 11:18:51

9 MS. ESKENAZI: Objection. Misstates the 11:18:55

10 document. 11:18:55

11 THE WITNESS: I don't recall who Laurie 11:18:56

12 Battle is. 11:19:01

13 BY MR. ULIN: 11:19:01

14 Q. Do you know one way or another whether 11:19:03

15 she's someone who worked at the Saul Zaentz Company? 11:19:04

16 A. I know the name and I wouldn't dispute that 11:19:08

17 if you tell me that was the case. 11:19:11

18 Q. Have you ever met her? 11:19:13

19 A. I don't believe so. 11:19:14

20 Q. Okay. Ms. Blackburn notes in her e-mail to 11:19:21

21 Ms. Battle on the first page of Exhibit 30 that most 11:19:23

22 of the goods in Class 16 fall within the rights 11:19:27

23 reserved by the Estate and the trademarks in Class 11:19:30

24 16, therefore, should have been registered in the 11:19:34

25 name of the Estate. 11:19:37

1 Do you see that? 11:19:38

2 A. Well, I can only agree with you that that's 11:19:38

3 what it says in this document, yes. 11:19:42

4 Q. Okay. Are you aware of the Estate having 11:19:44

5 taken the position that Zaentz should not register 11:19:46

6 trademarks in Class 16 at all for any goods? 11:19:48

7 MS. ESKENAZI: Objection. Vague and 11:19:56

8 ambiguous. 11:19:57

9 THE WITNESS: Sorry. Would you repeat the 11:19:59

10 question? 11:20:00

11 BY MR. ULIN: 11:20:00

12 Q. Sure. Are you aware of the Estate having 11:20:01

13 taken the position that Zaentz should not register 11:20:03

14 trademarks in Class 16 at all for any goods? 11:20:09

15 A. I have no recollection of the assertion 11:20:10

16 that you've just formulated. 11:20:12

17 Q. That is not the Estate's position, correct? 11:20:12

18 A. I didn't say that. I said I have no 11:20:14

19 recollection of the formulation that you just put 11:20:15

20 forward. 11:20:18

21 Q. Okay. Has the Estate, at any time, taken 11:20:23

22 the position that Zaentz should not register 11:20:25

23 trademarks in Class 16 at all for any goods? 11:20:28

24 MS. ESKENAZI: Objection. Vague and 11:20:30

25 ambiguous. Asked and answered. 11:20:32

1 in Class 16 and that those registrations are 11:22:11

2 interfering with the Estate's ability to enforce its 11:22:14

3 trademark rights. 11:22:17

4 Would you agree with that? 11:22:18

5 MS. ESKENAZI: Objection. Document speaks 11:22:19

6 for itself. Lacks foundation. 11:22:23

7 BY MR. ULIN: 11:22:23

8 Q. You may answer. 11:22:24

9 A. I can't comment on Ms. Blackburn's position 11:22:25

10 other than as set out in her e-mail. 11:22:29

11 Q. Okay. And her position here that the Class 11:22:30

12 16 trademarks should not have been registered as 11:22:35

13 they were and are interfering with the Estate's 11:22:37

14 ability to enforce their rights in The Lord of the 11:22:41

15 Rings and The Hobbit is essentially the same 11:22:43

16 position taken in this case by the Estate; is that 11:22:47

17 correct? 11:22:47

18 MS. ESKENAZI: Objection. Calls for a 11:22:52

19 legal conclusion. Misstates the document. 11:22:52

20 THE WITNESS: As a broad statement of 11:22:54

21 principle, it is the Estate's case that Zaentz's 11:22:56

22 registrations for books in Class 16 were 11:23:01

23 inappropriate. 11:23:03

24 BY MR. ULIN: 11:23:03

25 Q. And that's essentially the same objection 11:23:04

1 being made by Ms. Blackburn in this e-mail to 11:23:05

2 Ms. Battle, correct? 11:23:10

3 MS. ESKENAZI: Objection. Document speaks 11:23:11

4 for itself. Lacks foundation. 11:23:12

5 THE WITNESS: I can't make any comments on 11:23:16

6 this document, other than to agree with you what it 11:23:18

7 says on the piece of paper. 11:23:20

8 BY MR. ULIN: 11:23:20

9 Q. Right. But I'm not asking you what it says 11:23:23

10 on the piece of paper. I'm asking you whether 11:23:25

11 that's the same objection being raised by the Estate 11:23:27

12 in this case? 11:23:30

13 MS. ESKENAZI: Same objection. 11:23:30

14 BY MR. ULIN: 11:23:30

15 Q. You may answer. 11:23:31

16 MS. ESKENAZI: Lacks foundation. 11:23:32

17 THE WITNESS: I think I just did answer 11:23:33

18 that question. 11:23:34

19 MR. ULIN: Can we go off the record for 11:24:24

20 about three minutes? 11:24:26

21 MS. ESKENAZI: Sure. 11:24:27

22 THE VIDEOGRAPHER: Off the record at 11:24 11:24:27

23 a.m. 11:24:29

24 (Brief recess.) 11:24:35

25 THE VIDEOGRAPHER: We are back on the 11:39:15

1 record at 11:39 a.m. 11:39:22

2 BY MR. ULIN: 11:39:32

3 Q. Mr. Maier, I want to turn your attention 11:39:32

4 back just to a few of the exhibits that we've looked 11:39:34

5 at already this morning, starting with Exhibit 11:39:39

6 Number 24. 11:39:45

7 And this is a document you may recall that 11:39:54

8 we had not produced earlier than today in this case 11:39:55

9 because we had thought it was privileged based on 11:40:00

10 the top e-mail in the chain, which has been 11:40:04

11 redacted. 11:40:06

12 The -- 11:40:07

13 MS. ESKENAZI: So just for the record, I 11:40:10

14 just want to make sure that you understand that I'm 11:40:12

15 objecting to you asking questions about this as I 11:40:17

16 did before. 11:40:18

17 MR. ULIN: I understand. 11:40:18

18 MS. ESKENAZI: But I understand you're 11:40:19

19 going to go forward and do that anyway. 11:40:20

20 MR. ULIN: I am. It's true. 11:40:22

21 MS. ESKENAZI: But I'm not waiving my 11:40:23

22 objection. 11:40:24

23 BY MR. ULIN: 11:40:24

24 Q. The e-mail that I asked you about was one 11:40:25

25 from you to Annette Hurst at Howard Rice from May of 11:40:29

1 2002. 11:40:33

2 Do you see that? 11:40:33

3 A. I see that. 11:40:34

4 Q. Would that e-mail be in your files from 11:40:34

5 Manches? 11:40:43

6 MS. ESKENAZI: Objection. Calls for 11:40:45

7 speculation. 11:40:57

8 THE WITNESS: I know of no reason why it 11:40:57

9 wouldn't be. 11:41:00

10 BY MR. ULIN: 11:41:00

11 Q. Would it be the ordinary practice for your 11:41:01

12 e-mails, particularly on substantive matters, to be 11:41:04

13 in the files? 11:41:06

14 A. Yes. 11:41:06

15 Q. Do you know whether this e-mail was 11:41:07

16 produced by the Estate in this case? 11:41:09

17 MS. ESKENAZI: Objection. Lacks 11:41:14

18 foundation. 11:41:15

19 THE WITNESS: I don't know. I have no 11:41:15

20 recollection of this e-mail. 11:41:17

21 BY MR. ULIN: 11:41:17

22 Q. Okay. Do you know whether your e-mail 11:41:20

23 files from Manches were searched by the Estate in 11:41:24

24 connection with responding to discovery in this 11:41:29

25 case? 11:41:31

1 MS. ESKENAZI: Objection. Lacks 11:41:31

2 foundation. Calls for speculation. 11:41:33

3 To the extent that you may learn that 11:41:35

4 information from your attorneys, it's 11:41:37

5 attorney-client privileged and Mr. Ulin is not 11:41:40

6 entitled to invade the privilege. 11:41:45

7 THE WITNESS: Would you read back or repeat 11:41:49

8 the question, please? 11:41:50

9 MR. ULIN: Would you read the question 11:41:51

10 back, please. 11:42:00

11 (The reporter read the record 11:42:00

12 as follows: 11:42:00

13 "QUESTION: Do you know 11:41:21

14 whether your e-mail files from 11:41:22

15 Manches were searched by the 11:41:25

16 Estate in connection with 11:41:26

17 responding to discovery in this 11:41:29

18 case?") 11:42:01

19 MS. ESKENAZI: Same objections. 11:42:01

20 THE WITNESS: As far as I'm aware, all 11:42:03

21 documentation was turned over to Greenberg Glusker. 11:42:07

22 BY MR. ULIN: 11:42:07

23 Q. Okay. And is it your understanding, then, 11:42:09

24 that if your e-mail files from Manches were searched 11:42:12

25 in connection with discovery in this case, whoever 11:42:16

1 was doing the searching would have found this 11:42:21

2 e-mail? 11:42:23

3 MS. ESKENAZI: Objection. Calls for 11:42:24

4 speculation. Lacks foundation. Asked and answered. 11:42:27

5 THE WITNESS: I don't recall the e-mail 11:42:29

6 retention policy at Manches that would relate to an 11:42:32

7 e-mail of this kind. 11:42:36

8 BY MR. ULIN: 11:42:36

9 Q. Right. Although you said just a minute ago 11:42:37

10 that your expectation is that this would be in 11:42:39

11 the -- in the -- in your files, correct? 11:42:41

12 A. I said I knew of no reason why not. My 11:42:43

13 recollection of the practice then was that 11:42:48

14 substantive e-mails would be printed off and put on 11:42:49

15 the physical files. 11:42:53

16 Q. Okay. And so someone searching those files 11:42:53

17 should have found this e-mail, correct? 11:42:57

18 MS. ESKENAZI: Objection. Calls for 11:43:00

19 speculation. Lacks foundation. 11:43:04

20 THE WITNESS: I know of no reason why not. 11:43:04

21 BY MR. ULIN: 11:43:04

22 Q. Okay. And in any event, you don't know 11:43:06

23 whether the files were actually searched one way or 11:43:08

24 the other, correct? 11:43:10

25 MS. ESKENAZI: Objection. Calls for 11:43:12

1 speculation. Lacks foundation. And to the extent 11:43:14
2 it calls for attorney-client privileged 11:43:16
3 communications, I instruct the witness not to 11:43:18
4 answer. But if you can answer outside of any 11:43:20
5 attorney-client communications, be my guest. 11:43:23

6 THE WITNESS: Well, I can only repeat that 11:43:25
7 everything has been made available to Greenberg 11:43:27
8 Glusker. 11:43:28

9 BY MR. ULIN: 11:43:28

10 Q. Okay. And you don't know whether the 11:43:29
11 Estate actually produced this e-mail chain reflected 11:43:31
12 in Exhibit 24, correct? 11:43:34

13 A. I don't know. 11:43:37

14 Q. Looking at Exhibit 25. Again, here's an 11:43:38
15 e-mail from you to Annette Hurst at Howard Rice, 11:43:51
16 correct? 11:43:54

17 A. We agree that that's what it appeared to 11:44:01
18 be, yeah. 11:44:03

19 Q. Do you know whether this document was 11:44:04
20 produced by the Estate in discovery in this case? 11:44:05

21 MS. ESKENAZI: Same objections. Lacks 11:44:09
22 foundation. Calls for speculation. To the 11:44:11
23 extent -- to the extent it calls for attorney-client 11:44:15
24 communications, instruct the witness not to answer. 11:44:18

25 But if you know outside of that. 11:44:20

1 THE WITNESS: I don't know. 11:44:22

2 BY MR. ULIN: 11:44:22

3 Q. And again, you would expect, based on your 11:44:25

4 understanding of the filing -- filing procedures at 11:44:26

5 Manches, that this e-mail would have been printed 11:44:32

6 and retained in your files, correct? 11:44:36

7 A. The policy was to print off e-mails and 11:44:39

8 place them on the files. I can't be certain that 11:44:42

9 happened in 100 percent of cases. 11:44:44

10 Q. Fair enough. But your expectation is 11:44:45

11 that -- 11:44:45

12 A. In general, yes. 11:44:48

13 Q. -- a substantive e-mail like -- 11:44:48

14 A. Excuse me. 11:44:48

15 Q. Right. That a substantive e-mail like this 11:44:50

16 would have been printed off and retained in your 11:44:52

17 files, correct? 11:44:54

18 A. In general terms that would be correct. 11:44:54

19 Q. Okay. Turning to Exhibit 28. Again, an 11:45:00

20 e-mail from you to Annette Hurst, this one dating 11:45:11

21 from around October of 2003. Excuse me. 11:45:13

22 Do you know whether this document was 11:45:20

23 produced by the Estate? 11:45:21

24 MS. ESKENAZI: Same objections. Lacks 11:45:22

25 foundation. Calls for speculation. Attorney-client 11:45:27

1 privileged communication. 11:45:29

2 THE WITNESS: I don't know. 11:45:31

3 BY MR. ULIN: 11:45:31

4 Q. I'll represent to you that where you see 11:45:34

5 the Bates numbers SZC, that reflects production from 11:45:35

6 the files of the Saul Zaentz Company. 11:45:40

7 And where -- wherever possible in -- in 11:45:43

8 preparing for this deposition, if we had documents 11:45:51

9 produced by the Estate, we used them and you would 11:45:53

10 see a designation "Plaintiffs" at the bottom 11:45:57

11 right-hand corner of that page. 11:46:00

12 It's your expectation, based on the 11:46:02

13 document filing procedures at Manches, that a 11:46:07

14 printed-out copy of this document should be in your 11:46:12

15 files from Manches, correct? 11:46:14

16 A. That would be my expectation. 11:46:18

17 Q. Looking at Exhibit Number 29, the second 11:46:19

18 e-mail in the chain in Exhibit 29 is another e-mail 11:46:39

19 from you to Ms. Hurst, this one from the 6th of 11:46:41

20 November in 2003. 11:46:46

21 Do you see that? 11:46:48

22 A. Yes, I see that. 11:46:48

23 Q. And again, your expectation based on 11:46:52

24 Manches' document filing and retention policies is 11:46:57

25 that this e-mail would have been printed and 11:46:59

1 maintained in your files from Manches, correct? 11:47:01

2 MS. ESKENAZI: Objection. Calls for 11:47:06

3 speculation. 11:47:07

4 BY MR. ULIN: 11:47:07

5 Q. You may answer. 11:47:08

6 A. That was the general practice at Manches, 11:47:08

7 as I recall. 11:47:10

8 Q. And your expectation is the general 11:47:11

9 practice was followed in the overwhelming majority 11:47:13

10 of instances, correct? 11:47:16

11 A. Well, it would require the individual to 11:47:19

12 print out the e-mail, or his secretary, and put it 11:47:23

13 on the file in each case. So as long as that 11:47:25

14 happened, then, yes. 11:47:28

15 Q. And was that your practice, to print out 11:47:29

16 e-mails or have your secretary do that so that they 11:47:31

17 could be placed in the files at Manches? 11:47:33

18 A. That was my practice. I can't guarantee it 11:47:35

19 was followed in 100 percent of cases. 11:47:37

20 Q. Do you know whether Exhibit 29 was produced 11:47:39

21 by the Estate in discovery in this case? 11:47:46

22 MS. ESKENAZI: Objection. Calls for 11:47:49

23 speculation. Lacks foundation. Attorney-client 11:47:52

24 privileged communication. 11:47:53

25 If you can answer without invading the 11:47:54

1 attorney-client privilege, you can be my guest to 11:47:55

2 answer. 11:47:58

3 THE WITNESS: No, I don't know. 11:47:58

4 BY MR. ULIN: 11:47:58

5 Q. Does the fact that four randomly -- well, 11:48:06

6 "random" is the wrong term, but four e-mails 11:48:13

7 selected over a two-year period of time that relate 11:48:15

8 to the issues in this case were not produced by the 11:48:18

9 Estate suggest to you that your files were not 11:48:22

10 searched by the Estate in connection with discovery 11:48:26

11 in this case? 11:48:27

12 MS. ESKENAZI: Objection. Assumes facts 11:48:28

13 not in evidence. Calls for speculation. Lacks 11:48:32

14 foundation. Vague and ambiguous. 11:48:34

15 THE WITNESS: It does not suggest that to 11:48:35

16 me. 11:48:37

17 BY MR. ULIN: 11:48:37

18 Q. Even though it was your practice to print 11:48:38

19 out your e-mails and save them in the files, and 11:48:40

20 thus far every e-mail we've had from you was not 11:48:45

21 produced by the Estate, that doesn't suggest to you 11:48:47

22 that the files were not searched? 11:48:50

23 MS. ESKENAZI: Assumes facts not in -- 11:48:52

24 assumes facts not in evidence. Calls for 11:48:55

25 speculation. Lacks foundation. Vague and 11:48:56

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1	ambiguous.	11:49:00
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2 THE WITNESS: I know that the files were 11:49:00

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3 | searched. 11:49:02
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4 BY MR. ULIN: 11:49:02

5	0. How do you know that?	11:49:04
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6 A. Because I'm aware that all of the Estate's 11:49:05

7 | archive records, without exception, were turned over 11:49:12

8 to Greenberg Glusker. 11:49:14

9 O. You know they were made available, but I 11:49:15

10 think what you said earlier was that you didn't know 11:49:17

11	one way or the other whether they were searched?	11:49:19
----	--	----------

12 A. I know that they were made available. 11:49:24

13	O. Turning to Exhibit 20. Now, this is a	11:49:31
----	--	----------

14 letter from Ms. Blackburn to Mr. Bendich that we 11:49:41

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15 | looked at earlier. 11:49:44
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16 You know what, scratch this. I'm going to 11:49:52

17 move on from this question. I don't want to ask 11:49:54

18 this one. So we can -- you can put aside Exhibit 11:49:56

19	20. Thank you.	11:49:59
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20 Mark Exhibit 30 and put it before the 11:50:04

21	witness.	11:50:39
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22	THE REPORTER: 31.	11:50:39
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23	MS. ESKENAZI: 31.	11:50:39
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24 MR. ULIN: I'm sorry, thank you. 31. 11:50:39

25 | Let's mark Exhibit 31 and put it before the witness. 11:50:41

1 (The document referred to was 11:50:55
2 marked for identification as 11:50:55
3 Exhibit 31 and attached to this 11:50:55
4 deposition.) 11:50:56

5 MR. ULIN: Will you give that to your 11:50:56
6 counsel, please. Thank you. That's what I get for 11:50:56
7 going back to review exhibits that we already talked 11:50:57
8 about. 11:50:59

9 THE WITNESS: Do you want me to read this 11:51:36
10 in detail? 11:51:39

11 BY MR. ULIN: 11:51:39

12 Q. Well, let's see for a minute. I don't 11:51:40
13 think you need to, but you can see in response to my 11:51:41
14 questions whether you feel the need to. 11:51:43

15 Have you seen Exhibit 31 before? 11:51:44

16 A. I don't specifically recall this document. 11:51:47

17 Q. So you don't -- you don't -- this letter 11:51:55
18 purports to be a letter -- this letter purports to 11:51:57
19 be from Carole Barrett of the Howard Rice firm and 11:52:00
20 it's addressed to you and Ms. Blackburn dated 11:52:04
21 April the 30th, 2004, correct? 11:52:06

22 A. Yeah. 11:52:06

23 Q. As you sit here today, you don't recall 11:52:11
24 receiving this letter; is that correct? 11:52:13

25 A. Well, I recall that around that time there 11:52:15

1 was correspondence between my firm and Howard Rice 11:52:22
2 with regard to the Class 16 trademark issue. And 11:52:26
3 this appears to be part of that correspondence. But 11:52:30
4 I don't specifically recognize this letter. 11:52:35

5 Q. You don't have any reason to doubt that you 11:52:52
6 received this letter, though, as you sit here today, 11:52:54
7 do you? 11:52:55

8 A. I don't have any reason to doubt that I 11:52:57
9 received this letter. 11:52:58

10 Q. And again, I think you said it's generally 11:52:59
11 consistent with your recollection that there was 11:53:01
12 correspondence between the two firms on the 11:53:03
13 subject -- 11:53:04

14 A. Yes. 11:53:04

15 Q. -- of Class 16 rights? 11:53:05

16 A. Yes. 11:53:06

17 Q. Do you know who Ms. Barrett is? 11:53:11

18 A. Yes, she was an attorney at Howard Rice. 11:53:14

19 Q. And have you met her? 11:53:17

20 A. Yes. 11:53:18

21 Q. And you're -- are you aware that her 11:53:19
22 responsibilities related to trademark registration 11:53:28
23 and prosecution? 11:53:30

24 MS. ESKENAZI: Objection. Calls for 11:53:31
25 speculation. Lacks foundation. 11:53:32

1 THE WITNESS: I don't recall. 11:53:39

2 BY MR. ULIN: 11:53:39

3 Q. Okay. So Zaentz in Ms. Barrett's letter 11:53:51

4 disagrees with the Estate's position with respect to 11:53:58

5 whether they can register class -- whether they can 11:54:00

6 register marks in Class 16, correct? 11:54:06

7 MS. ESKENAZI: Well, would you like him to 11:54:10

8 read the letter? 11:54:12

9 MR. ULIN: I'm letting Mr. Maier advise me 11:54:12

10 on that subject. 11:54:17

11 THE WITNESS: Well, if you're going to ask 11:54:17

12 me questions about what the letter says and related 11:54:19

13 questions, then I will have to read it. 11:54:22

14 BY MR. ULIN: 11:54:22

15 Q. Okay. And really the only questions that I 11:54:25

16 want to ask you, which I'm happy to let you know 11:54:26

17 right now is, is it correct that Zaentz is taking 11:54:28

18 the position here that it disagrees with the 11:54:34

19 Estate's contentions about their Class 16 rights and 11:54:36

20 also making a proposal for resolving the Class 16 11:54:40

21 issues? 11:54:45

22 A. Well, they appear in the letter to be 11:55:31

23 defending their position. 11:55:33

24 Q. And taking a position with respect to 11:55:35

25 Zaentz's Class 16 rights that is contrary to the 11:55:37

1 position taken by the Estate, correct? 11:55:39

2 MS. ESKENAZI: Objection. Document speaks 11:55:42

3 for itself. 11:55:43

4 THE WITNESS: Well, they say that they're 11:55:43

5 disputing what Cathleen Blackburn said in her letter 11:55:47

6 of February 11, 2004 or responding to that issue. 11:55:52

7 BY MR. ULIN: 11:55:52

8 Q. And Ms. Barrett also makes a proposal for 11:55:58

9 resolving the Class 16 issues, correct? 11:56:00

10 A. Well, reading this very quickly, certainly 11:56:14

11 numbers 2 and 3 seems to be proposing their change 11:56:17

12 in their present position, but I will need to read 11:56:20

13 this letter in full to -- to answer your question. 11:56:22

14 Q. I'm not sure you do, but you may if you 11:56:26

15 wish. 11:56:29

16 All -- all I'm asking is whether she makes 11:56:29

17 a proposal for resolving the Class 16 issues? 11:56:31

18 MS. ESKENAZI: I'm going to object as the 11:56:35

19 document speaks for itself. 11:56:37

20 THE WITNESS: It's framed in terms of a 11:56:45

21 proposal. Whether it's proposing anything other 11:56:48

22 than the status quo, I'm not clear from my very 11:56:49

23 brief read. 11:56:52

24 BY MR. ULIN: 11:56:52

25 Q. And with respect to the status quo, you 11:56:53

1 mean that Zaentz withhold the Class 16 11:56:55

2 registrations? 11:56:57

3 A. For books, yes. 11:56:58

4 Q. And that Zaentz would license the Estate 11:56:59

5 for use of those registrations within its reserved 11:57:06

6 rights under the agreements between Zaentz and the 11:57:09

7 Estate? 11:57:11

8 A. Could you point me to that proposal in the 11:57:13

9 letter? 11:57:16

10 Q. At page 5 of the letter in the first full 11:57:25

11 paragraph, the second sentence. 11:57:32

12 A. I see that. 11:57:37

13 MS. ESKENAZI: Objection. Document speaks 11:57:38

14 for itself. 11:57:41

15 And without reading the entire document, I 11:57:41

16 would caution the witness that that sentence taken 11:57:46

17 out of context might or might not be relevant. 11:57:49

18 MR. ULIN: I can move on. 11:58:12

19 MS. ESKENAZI: Okay. 11:58:13

20 THE WITNESS: Okay. I'm sorry. I didn't 11:58:15

21 know there was a question pending. 11:58:16

22 MR. ULIN: That's all right. 11:58:18

23 MS. ESKENAZI: There isn't. 11:58:18

24 BY MR. ULIN: 11:58:18

25 Q. Do you recall an exchange later in 2004 11:58:20

1 with represent- -- representatives of Zaentz about 11:58:23

2 your concerns with the way that Zaentz's Class 16 11:58:26

3 rights were described in a complaint against Kultur, 11:58:32

4 K-u-l-t-u-r, International Films? 11:58:38

5 A. The name rings a bell. I don't have a 11:58:43

6 specific recollection of that. 11:58:45

7 Q. Okay. You don't recall a -- an exchange 11:58:45

8 with Zaentz about your concerns about the way rights 11:58:49

9 were articulated in Zaentz's dispute with Kultur; is 11:58:57

10 that correct? 11:58:57

11 MS. ESKENAZI: Object- -- 11:59:02

12 THE WITNESS: I don't -- I don't recall 11:59:02

13 any. 11:59:03

14 MR. ULIN: Okay. Let's mark Exhibit 32. 11:59:49

15 (The document referred to was 11:59:50

16 marked for identification as 11:59:50

17 Exhibit 32 and attached to this 11:59:50

18 deposition.) 12:01:11

19 THE WITNESS: I've read it quickly. 12:01:11

20 BY MR. ULIN: 12:01:12

21 Q. Mr. Maier, have you seen Exhibit 32 before? 12:01:12

22 A. I don't recall this specific letter. 12:01:14

23 Q. You don't recall this letter that you 12:01:19

24 apparently sent to Annette Hurst on or about the 12:01:23

25 24th of June 2004? 12:01:25

1 A. Well, I have no reason to doubt that I did 12:01:26
2 so, but I don't specifically recall the letter. 12:01:28

3 Q. Okay. Does it refresh your recollection 12:01:31
4 about the Kultur dispute? 12:01:33

5 A. It doesn't refresh my recollection about 12:01:36
6 the name Kultur, but it does refresh my recollection 12:01:39
7 that there was one instance where we discovered that 12:01:42
8 the Saul Zaentz Company had claimed ownership of the 12:01:45
9 J.R.R. Tolkien and Tolkien trademarks which belonged 12:01:48
10 to the Estate. 12:01:52

11 Q. You indicate at page 2 of this letter that 12:01:54
12 you became aware of the complaint in the Kultur case 12:01:56
13 owing to the due dil- -- owing to the diligence of 12:02:01
14 one of your associated U.S. firms. 12:02:02

15 Do you see that? 12:02:05

16 A. Yeah, I see that. 12:02:05

17 Q. Which firm, if you recall? 12:02:08

18 A. I don't recall. 12:02:10

19 Q. Okay. Do you -- does this letter refresh 12:02:13
20 your recollection with respect to your concerns 12:02:16
21 about the manner which Zaentz articulated its Class 12:02:19
22 16 rights in the Kultur complaint? 12:02:25

23 MS. ESKENAZI: Objection. Vague and 12:02:28
24 ambiguous. 12:02:32

25 THE WITNESS: No. 12:02:32

1 MR. ULIN: Mark Exhibit 33. 12:02:48

2 (The document referred to was 12:02:48

3 marked for identification as 12:02:48

4 Exhibit 33 and attached to this 12:02:48

5 deposition.) 12:05:22

6 BY MR. ULIN: 12:05:23

7 Q. Mr. Maier, have you seen Exhibit 33 before? 12:05:23

8 A. Well, as before, I don't specifically 12:05:27

9 remember it, but I have no doubt -- I have no reason 12:05:29

10 to doubt that this is a letter from me to Carole 12:05:31

11 Barrett. 12:05:34

12 Q. Consistent with your recollection that 12:05:35

13 there was correspondence between you and counsel for 12:05:37

14 the Saul Zaentz Company concerning the Class 16 12:05:41

15 issues around this time? 12:05:43

16 A. Correct. 12:05:44

17 Q. Okay. At the first page of your letter, 12:05:47

18 which is attached to the e-mail beginning at Bates 12:05:52

19 10972, you indicate that you're responding to 12:05:56

20 Ms. Barrett's letter of April the 30th, 2004, 12:06:05

21 correct? 12:06:05

22 A. That's what it says, yeah. 12:06:11

23 Q. Okay. And that letter is the document we 12:06:12

24 marked as Exhibit 31 and discussed a few minutes 12:06:23

25 ago; is that correct? 12:06:27

1 A. Yeah, it appears to be. 12:06:29

2 Q. Okay. Why did it take you 11 months to 12:06:33

3 respond to Ms. Barrett's letter? 12:06:34

4 A. I don't recall. 12:06:36

5 Q. You say your clients and -- below the 12:06:38

6 heading "Class 16 Trademarks," remain extremely 12:06:54

7 unhappy about the trademark position, correct? 12:06:55

8 A. Yeah. 12:06:59

9 Q. What do you mean by that? 12:07:00

10 A. Well -- 12:07:01

11 MS. ESKENAZI: Objection. 12:07:06

12 BY MR. ULIN: 12:07:06

13 Q. You may answer. 12:07:06

14 MS. ESKENAZI: Objection to the extent it 12:07:11

15 calls for specific attorney-client communications. 12:07:12

16 But you can answer in general. 12:07:15

17 THE WITNESS: I can't give any answer 12:07:18

18 beyond what is set out in the following paragraphs 12:07:20

19 of the letter. 12:07:23

20 BY MR. ULIN: 12:07:23

21 Q. Okay. Meaning what? 12:07:26

22 A. Meaning that the following paragraphs of 12:07:31

23 the letter set out why the clients are extremely 12:07:32

24 unhappy about the trademark position. 12:07:35

25 Q. Okay. But I'm not asking you what it says 12:07:37

1 in the letter. I'm asking you independent of the 12:07:40
2 letter what -- what you meant when you said the 12:07:41
3 clients remain extremely unhappy about the trademark 12:07:44
4 position? 12:07:47

5 A. I don't recall. 12:07:47

6 Q. So your only recollection with respect to 12:07:48
7 what you meant or -- your only ability to testify 12:07:53
8 about what you meant when you said the clients are 12:07:56
9 unhappy about the trademark position is what it says 12:07:57
10 in this letter; is that correct? 12:07:59

11 A. That's -- 12:08:01

12 MS. ESKENAZI: Objection. 12:08:01

13 THE WITNESS: -- correct. 12:08:01

14 MS. ESKENAZI: Objection. Vague and 12:08:01
15 ambiguous. 12:08:04

16 BY MR. ULIN: 12:08:04

17 Q. You acknowledge in this letter at the 12:08:17
18 bottom of page 1 and top of page 2 that Zaentz does 12:08:19
19 indeed have rights to license goods in Class 16, 12:08:23
20 correct? 12:08:23

21 MS. ESKENAZI: Objection. Letter speaks 12:08:30
22 for itself. 12:08:30

23 THE WITNESS: Well, I can't add to what it 12:08:39
24 says in the letter, but I don't see a reference to 12:08:42
25 Class 16 in that paragraph. 12:08:47

1 BY MR. ULIN: 12:08:47

2 Q. But you do recognize in -- you acknowledge 12:08:51

3 that Zaentz has rights to license books, calendars, 12:08:55

4 greeting cards, postcards, notelets and other 12:09:01

5 printed stationery, poster and prints, et cetera, 12:09:03

6 correct? 12:09:03

7 MS. ESKENAZI: Objection. Document speaks 12:09:08

8 for itself. 12:09:09

9 THE WITNESS: The -- the document recites 12:09:09

10 what it says in certain clauses of the 1975 12:09:12

11 agreement. 12:09:14

12 BY MR. ULIN: 12:09:14

13 Q. Okay. And those are all goods that are 12:09:15

14 within International Class 16, right? 12:09:17

15 MS. ESKENAZI: Objection. Calls for a 12:09:20

16 legal conclusion. 12:09:22

17 THE WITNESS: I don't know. 12:09:23

18 BY MR. ULIN: 12:09:23

19 Q. Come on, Mr. Maier, you know this. You're 12:09:24

20 a trademark lawyer. 12:09:26

21 A. I would need to look at Class 16 and see 12:09:28

22 what the categories of goods are in there. I can't 12:09:30

23 sit here now and say, yes, I know those -- those are 12:09:34

24 all in Class 16. 12:09:36

25 Q. You'd agree that books are in Class 16, 12:09:38

1 right? 12:09:38

2 A. Yes. 12:09:38

3 Q. You'd agree that calendars are in Class 16, 12:09:41

4 right? 12:09:43

5 A. I don't know. 12:09:43

6 Q. You don't know. You'd agree that postcards 12:09:43

7 are in Class 16, right? 12:09:46

8 A. I don't know. 12:09:47

9 MS. ESKENAZI: Same objections. 12:09:47

10 BY MR. ULIN: 12:09:47

11 Q. You'd agree that printed materials are in 12:09:49

12 Class 16, right? 12:09:51

13 A. I don't know. 12:09:51

14 Q. Even though you engaged in this lengthy 12:09:52

15 correspondence and discussion with Zaentz over Class 12:09:58

16 16 matters, your testimony is you don't know what's 12:09:59

17 in Class 16; is that right? 12:10:03

18 MS. ESKENAZI: Objection. Misstates the 12:10:05

19 testimony. 12:10:06

20 THE WITNESS: I don't have a specific 12:10:06

21 recollection of this letter. And the focus of the 12:10:07

22 correspondence that we previously discussed was 12:10:11

23 about books in Class 16. 12:10:12

24 BY MR. ULIN: 12:10:12

25 Q. You recognize in this letter that the 12:10:24

1 Estate and Zaentz each have rights to license goods, 12:10:26
2 including books, calendars, greeting cards, et 12:10:32
3 cetera, correct? 12:10:37

4 MS. ESKENAZI: Objection. Document speaks 12:10:40
5 for itself. 12:10:41

6 THE WITNESS: The clause that we've been 12:10:47
7 discussing sets out the categories of goods that are 12:10:48
8 specifically rever- -- reserved to the licensor to 12:10:51
9 the exclusion of the licensee, so that's what's 12:10:54
10 reserved to the Estate. 12:10:57

11 BY MR. ULIN: 12:10:57

12 Q. Okay. But those goods are not reserved to 12:11:02
13 the Estate to the extent that they rely primarily on 12:11:03
14 artwork from the films and use the printed word only 12:11:11
15 incidentally, correct? 12:11:14

16 MS. ESKENAZI: Objection. Misstates the 12:11:16
17 document. 12:11:17

18 THE WITNESS: I'm sorry. Where does it say 12:11:17
19 that? 12:11:19

20 BY MR. ULIN: 12:11:19

21 Q. Bottom of page 1 and top of page 2. 12:11:20

22 MS. ESKENAZI: Objection. Misstates the 12:11:25
23 document. 12:11:27

24 THE WITNESS: I see the words, "excluding 12:11:39
25 those using artwork only from the films." 12:11:40

1 BY MR. ULIN: 12:11:40

2 Q. You take the position in the first full 12:11:43

3 paragraph on page 2 that Zaentz's Class 16 12:11:49

4 registrations do not carve out the Estate's rights 12:11:53

5 and therefore were prosecuted improperly and are 12:11:55

6 liable to rev- -- revocation, correct? 12:11:58

7 MS. ESKENAZI: Document speaks for itself. 12:12:03

8 THE WITNESS: That's what it says in that 12:12:06

9 paragraph. 12:12:07

10 BY MR. ULIN: 12:12:07

11 Q. And that -- is that -- was that the 12:12:08

12 Estate's position as of the 23rd of March 2005? 12:12:09

13 A. I can't add to what it says in that 12:12:13

14 paragraph. 12:12:17

15 Q. Was that the position that you were 12:12:17

16 asserting on behalf of the Estate as of the 23rd of 12:12:18

17 March 2005? 12:12:22

18 A. Yes, it was. 12:12:22

19 Q. Okay. And that's essentially the same 12:12:23

20 position the Estate asserts in this lawsuit, 12:12:30

21 correct? 12:12:30

22 MS. ESKENAZI: Objection. Calls for a 12:12:36

23 legal conclusion. 12:12:38

24 THE WITNESS: I can't be exact that it's 12:12:38

25 formulated in this letter in the same way that it's 12:12:40

1 formulated in the complaint. But part of the 12:12:42

2 complaint relates to Zaentz's registrations for 12:12:45

3 books in Class 16. 12:12:48

4 BY MR. ULIN: 12:12:48

5 Q. And makes the assertion that they are too 12:12:52

6 broad because they don't carve out rights that were 12:12:54

7 reserved to the Estate, correct? 12:13:00

8 MS. ESKENAZI: Objection. Vague and 12:13:02

9 ambiguous. Calls for a legal conclusion. 12:13:02

10 THE WITNESS: I don't recall how the 12:13:04

11 dispute is precisely set out in the complaint. 12:13:07

12 BY MR. ULIN: 12:13:07

13 Q. Okay. You also propose in this letter a 12:13:11

14 resolution to the Class 16 issues, correct? 12:13:12

15 A. I can see there's a reference to being 12:13:20

16 prepared to deal with the matter on a compromised 12:13:23

17 basis, yes. 12:13:26

18 Q. Okay. And your proposal is that Zaentz 12:13:27

19 would amend its registrations in certain 12:13:30

20 jurisdictions and grant the Estate exclusive 12:13:32

21 licenses elsewhere, correct? 12:13:35

22 MS. ESKENAZI: Objection. Document speaks 12:13:37

23 for itself. 12:13:38

24 THE WITNESS: Insofar as that's what that 12:13:39

25 document says, yes. 12:13:42

1 BY MR. ULIN: 12:13:42

2 Q. Was that the proposal that you made to 12:13:43

3 Zaentz in March of 2005? 12:13:47

4 MS. ESKENAZI: Objection. Document speaks 12:13:50

5 for itself. 12:13:51

6 THE WITNESS: Insofar as the letter states 12:13:54

7 that proposal, that appears to be the case, yes. 12:13:55

8 BY MR. ULIN: 12:13:55

9 Q. In other words, you don't recall as you sit 12:13:58

10 here today what proposal you made in March of 2005, 12:13:59

11 but you're able to indicate what the -- what a 12:14:02

12 letter you drafted eight years ago says, correct? 12:14:06

13 MS. ESKENAZI: Objection. Vague and 12:14:11

14 ambiguous. 12:14:13

15 BY MR. ULIN: 12:14:14

16 Q. Let me -- let me break that down because 12:14:16

17 it's two questions. 12:14:17

18 A. Okay. 12:14:17

19 Q. I think what you're saying is, as you sit 12:14:18

20 here today, you don't recall what the substance of a 12:14:20

21 proposal for res- -- for resolving the Class 16 12:14:24

22 issues to Zaentz was in 2005; is that correct? 12:14:26

23 A. Let me give you a more general answer that 12:14:30

24 may help. 12:14:32

25 Q. Fair enough. 12:14:33

1 A. I recall a course of correspondence 12:14:33
2 regarding this issue at around this time. I cannot 12:14:37
3 recall, without the prompting of documents, what 12:14:39
4 proposals and counterproposals were made when and by 12:14:42
5 whom. When you show me these documents, then I see 12:14:45
6 what those documents say. 12:14:48

7 Q. But you don't actually recall what the 12:14:49
8 proposal was of your own memory. You simply see 12:14:51
9 what it says in the document; is that correct? 12:14:54

10 A. That's correct. 12:15:09

11 Q. Did there -- do you recall a meeting that 12:15:09
12 you attended with representatives from the Saul 12:15:13
13 Zaentz Company and their outside counsel in Oxford 12:15:17
14 in 2005, in September of 2005? 12:15:20

15 A. I recall a meeting with some of the Zaentz 12:15:23
16 people in Oxford. I can't be precise about the 12:15:30
17 date. 12:15:34

18 Q. Okay. Who do you -- who do you recall -- 12:15:34
19 well, let me just ask this question: How many 12:15:39
20 in-person meetings do you recall taking place in 12:15:51
21 England between -- which you attended with 12:15:57
22 representatives of the Saul Zaentz Company at which 12:16:02
23 you addressed trying to resolve the Class 16 issue? 12:16:04

24 A. I recall one meeting in Oxford and one 12:16:09
25 meeting in London, so two. 12:16:15

1 Q. Okay. And which one came first in time? 12:16:18

2 A. I think it was the Oxford meeting. 12:16:19

3 Q. And I'll represent to you that based on the 12:16:25

4 documents I've read, I think that's right. 12:16:27

5 Do you recall how far apart in time those 12:16:29

6 two meetings were? 12:16:35

7 A. I don't recall. 12:16:36

8 Q. Okay. With respect to the Oxford meeting, 12:16:41

9 the first one, who attended that meeting? 12:16:45

10 A. I would like to answer your question but I 12:16:49

11 could only tell you who I think would have been 12:17:01

12 there as opposed to recalling who was there. 12:17:03

13 Q. As you sit here today, you can't -- 12:17:06

14 A. I don't recall exactly. 12:17:07

15 Q. -- recall who actually attended the Oxford 12:17:08

16 meeting? 12:17:11

17 Why don't you answer the question that you 12:17:11

18 can answer, which is, who you think would have been 12:17:13

19 there, and then we'll move on from there. 12:17:15

20 MS. ESKENAZI: Okay. Well, I'm just going 12:17:17

21 to object as calling for speculation. 12:17:18

22 MR. ULIN: Fair enough. 12:17:20

23 MS. ESKENAZI: But with that understood -- 12:17:21

24 MR. ULIN: It's -- it's a discovery 12:17:22

25 deposition. Sometimes speculation is helpful. 12:17:24

1 THE WITNESS: I would imagine that Cathleen 12:17:31

2 Blackburn had been there, Al Bendich. No, I -- I 12:17:33

3 honestly don't recall. 12:17:52

4 BY MR. ULIN: 12:17:52

5 Q. Okay. Do you recall whether 12:17:54

6 representatives of HarperCollins attended the 12:17:55

7 meeting in Oxford? 12:17:59

8 A. I don't recall. 12:18:00

9 Q. Do you recall where the meeting in Oxford 12:18:01

10 took place? 12:18:07

11 A. It was at Manches' then premises. 12:18:07

12 Q. Do you recall how long the meeting was? 12:18:25

13 A. No. 12:18:27

14 Q. Do you recall whether it was all day or 12:18:27

15 some portion of a day? 12:18:35

16 A. I don't think it was all day, but I can't 12:18:36

17 remember exactly how long it was. 12:18:43

18 Q. Do you recall whether it was in the morning 12:18:44

19 or afternoon? 12:18:46

20 A. No. 12:18:46

21 Q. Do you recall what subjects were addressed 12:18:57

22 at the September 2005 meeting in Oxford? 12:19:00

23 A. No, I'd be speculating. 12:19:03

24 Q. Do you recall whether the Class 16 issue 12:19:12

25 was discussed at the September 2005 meeting in 12:19:22

1 Oxford? 12:19:27

2 A. I believe it would have been, but I don't 12:19:27

3 specifically recall that meeting or what was 12:19:33

4 discussed at the meeting. 12:19:36

5 Q. And that may answer my next question, which 12:19:37

6 is, what was said about the Class 16 issue at the 12:19:40

7 September 2005 meeting in Oxford? 12:19:43

8 A. I don't recall. 12:19:46

9 Q. Can you tell me everything that you do 12:19:49

10 recall about the September 2005 meeting in Oxford? 12:19:52

11 A. No. Again, I recall some of the issues 12:19:54

12 that were around at that time. But I'd be 12:20:21

13 speculating if I said those were the issues 12:20:25

14 discussed at the meeting. So I don't want to be 12:20:27

15 unhelpful, but I can't remember exactly what we 12:20:31

16 talked about in that meeting. 12:20:33

17 Q. Okay. What were the -- when you say you 12:20:36

18 recall some of the issues that were around at that 12:20:37

19 time, what issues are you referring to? 12:20:39

20 A. I recall that there was an issue about 12:20:41

21 the -- the Estate suffering by the 40 percent and 12:20:47

22 the 22 percent deduction on merchandising royalties 12:20:50

23 and the fact that Zaentz had previously agreed to 12:20:54

24 combine those deductions, but that hadn't happened. 12:21:01

25 At some stage Zaentz raised the name of 12:21:07

1 their operation, their trading name, which I think 12:21:16
2 was Tolkien Enterprises, and they wanted to continue 12:21:23
3 using that beyond the period to which they were 12:21:25
4 entitled. And the Class 16 issue. 12:21:30

5 But as I sit here now, I can't remember 12:21:35
6 those items actually being discussed. So, again, 12:21:37
7 it's a "would have been." 12:21:40

8 Q. Okay. And I take it that also means you 12:21:50
9 can't recall whether there were any resolutions that 12:21:51
10 came out of that September 2005 meeting? 12:21:54

11 A. No, I don't recall. 12:21:56

12 MR. ULIN: Why don't we break for lunch. 12:22:21

13 MS. ESKENAZI: Okay. 12:22:25

14 THE VIDEOGRAPHER: This is the end of media 12:22:25
15 number 2. Off the record at 12:22 p.m. 12:22:27

16 (AT 12:22 p.m., the
17 deposition of STEVEN ANDREW MAIER
18 was adjourned for noon recess.)

19 ///

20 ///

21

22

23

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1 (At 1:31 p.m., the deposition
2 of STEVEN ANDREW MAIER was
3 reconvened.)

4 13:31:33

5 THE VIDEOGRAPHER: We're back on the record 13:31:33

6 at 1:31 p.m. This is the beginning of media number 13:31:49

7 3. Counsel may proceed. 13:31:53

8 MS. ESKENAZI: You asked that over lunch I 13:31:56

9 come back with a couple of case cites. This is 13:31:58

10 preliminary, but I -- I did want to comply with your 13:32:01

11 request, which is, U.S. vs. Gonzalez, 669 F.3d 13:32:03

12 974 -- if you'd like we can e-mail them to you, 13:32:12

13 but -- Ninth Circuit 2012. 13:32:16

14 And then there's In Re: Teleglobe 13:32:17

15 Communications Corporation, 493 F.3d 345, which is 13:32:21

16 Third Circuit case 2007. 13:32:26

17 I also have a proposal for a compromise if 13:32:31

18 you'd like to explore that. 13:32:35

19 MR. ULIN: Go ahead. 13:32:37

20 MS. ESKENAZI: Okay. I do believe these 13:32:38

21 are privileged communications, especially in light 13:32:41

22 of the document that you produced, number 27, which 13:32:45

23 does indeed show that the parties were joint 13:32:50

24 claimants. 13:32:53

25 But nonetheless, I would be willing to 13:32:55

1 allow questioning in this deposition about these 13:32:58
2 documents so long as everybody agrees that that in 13:33:02
3 and of itself will not constitute a waiver and that 13:33:06
4 if we kind of -- we can seal this part of the 13:33:11
5 testimony off, and if you guys would like to go to a 13:33:14
6 magistrate and say, well, it is a waiver, just by 13:33:19
7 virtue of our having sued you or for whatever 13:33:23
8 grounds you want to claim there's some kind of a 13:33:25
9 waiver, other than the fact that I let you continue 13:33:28
10 with questioning here, then if you win, you know, 13:33:29
11 everybody gets to use whatever was said here and 13:33:36
12 turned over. And if you don't, then it remains 13:33:39
13 sealed in a box. That's what I would propose. 13:33:42
14 MR. ULIN: Why don't we take a second just 13:33:53
15 to discuss it. 13:33:55
16 MS. ESKENAZI: Sure. Fair enough. I 13:33:56
17 just -- I'm trying to -- 13:33:58
18 MR. ULIN: Proposal -- proposal seems 13:33:59
19 reasonable and worth discussing, so let's take a 13:34:00
20 second and do that. 13:34:03
21 MS. ESKENAZI: Sure. 13:34:03
22 THE VIDEOGRAPHER: Off the record at 1:34 13:34:04
23 p.m. 13:34:09
24 (Brief recess.) 13:35:24
25 THE VIDEOGRAPHER: We are back on the 13:35:25

1 record at 1:35 p.m. 13:35:26

2 MR. ULIN: We've discussed off the record 13:35:27

3 and we find the proposal acceptable. Just to be 13:35:29

4 clear, we are going to revisit exhibits numbers -- 13:35:31

5 MS. ESKENAZI: 27 and 28. 13:35:42

6 MR. ULIN: 27 and 29. Thank you. 13:35:42

7 MS. ESKENAZI: Oh, no, 26 and 27. 13:35:46

8 MR. ULIN: 26 and 27? 13:35:48

9 MS. ESKENAZI: Yeah. 13:35:48

10 MR. ULIN: Let's start that again. 13:35:49

11 We're going to go back and revisit Exhibits 13:35:50

12 26 and 27. We will ask our substantive questions 13:35:53

13 about those documents. We are willing to stipulate 13:35:55

14 that by virtue of Mr. Maier answering those 13:35:57

15 questions, that would not constitute a waiver of 13:36:00

16 your assertions of privilege over the documents. 13:36:04

17 And again, with the understanding that we dispute 13:36:08

18 your assertions of privilege and our accepting the 13:36:11

19 stipulation in no way prejudices our arguments about 13:36:14

20 privilege or, you know, any position we might take 13:36:17

21 in later motion practice about whether they are, in 13:36:20

22 fact, privileged. 13:36:24

23 MS. ESKENAZI: And I just want to be clear 13:36:24

24 that it also includes the documents themselves, the 13:36:26

25 fact that I'm allowing you to use the documents in 13:36:28

1 this deposition with Warner Bros. here will also be 13:36:31
2 carved out. We're not -- that in and of itself is 13:36:35
3 not going to constitute a waiver. 13:36:38

4 MR. ULIN: Fair enough. And again, without 13:36:39
5 prejudice to our arguments that the documents are 13:36:41
6 not, in fact, privileged and there's nothing to 13:36:44
7 waive. 13:36:46

8 MS. ESKENAZI: Both parties -- all parties 13:36:46
9 are reserving their rights to argue whether any 13:36:47
10 prior conduct constituted a waiver. 13:36:50

11 MR. ULIN: With that said, I think we can 13:36:54
12 agree and move forward. 13:36:56

13 MS. ESKENAZI: Okay. 13:36:57

14 MR. ULIN: Okay with you, Dan? 13:37:01

15 MR. PETROCELLI: Yes. 13:37:03

16 MR. ULIN: All right. 13:37:04

17 Q. Mr. Maier, before we broke for lunch, we 13:37:05
18 had been discussing a meeting that took place in 13:37:09
19 Oxford in 2005. 13:37:14

20 Do you recall that? 13:37:16

21 A. I recall that discussion, yeah. 13:37:17

22 Q. And one of the topics that was on the 13:37:18
23 agenda at that meeting, you suggested, was the Class 13:37:21
24 16 issues, correct? 13:37:25

25 A. I would think it must have been. 13:37:27

1 Q. Okay. You don't remember specifically, but 13:37:29
2 you would think -- it being one of the issues that 13:37:30
3 was being discussed at the time by Zaentz and the 13:37:32
4 Estate, it was likely to have been discussed at the 13:37:37
5 2005 meeting in Oxford, correct? 13:37:39

6 A. I wasn't sure about the date but, yes. 13:37:41

7 Q. Okay. That was the first of two meetings 13:37:46
8 between representatives of Zaentz and 13:37:47
9 representatives of the Estate on a variety of 13:37:52
10 issues, correct? 13:37:55

11 MS. ESKENAZI: Objection. Asked and 13:37:55
12 answered. 13:37:57

13 THE WITNESS: I believe that's right. 13:37:58
14 BY MR. ULIN: 13:37:58

15 Q. Okay. I want to step back from those 13:38:00
16 meetings and any particular context for the moment 13:38:03
17 and ask you, from that first meeting, which I'll 13:38:05
18 represent to you took place in 2005, until 2010, 13:38:10
19 what do you recall about your communications and 13:38:17
20 exchanges with Zaentz about the Class 16 issue? 13:38:23

21 MS. ESKENAZI: Objection. Vague and 13:38:27
22 ambiguous. 13:38:30

23 THE WITNESS: I recall that there was a 13:38:30
24 series of -- of back and forth involving proposals, 13:38:33
25 counterproposals. There was a telephone 13:38:39

1 conversation at one stage. An ongoing dialogue. 13:38:41

2 BY MR. ULIN: 13:38:56

3 Q. And with respect to the series of 13:38:56

4 back-and-forth proposals, are there any particular 13:39:01

5 proposals made either by the Estate or by Zaentz 13:39:03

6 that you recall as you sit here today? 13:39:07

7 MS. ESKENAZI: Objection. Vague and 13:39:12

8 ambiguous. 13:39:12

9 THE WITNESS: One of the letters we looked 13:39:17

10 at earlier referred to a proposal whereby Zaentz 13:39:19

11 were going to assign certain trademarks to us, and I 13:39:24

12 think there was going to be a license for others. I 13:39:27

13 need to look at it again to be precise. 13:39:30

14 I have a recollection that in one of the 13:39:35

15 meetings Zaentz appeared to be moving backwards from 13:39:37

16 something we thought had been agreed. I think that 13:39:40

17 was the second meeting. And I recall there was a 13:39:43

18 certain amount of disappointment in that meeting at 13:39:45

19 some of the positions Zaentz were taking. 13:39:51

20 There was then further correspondence aimed 13:39:53

21 at resolving these issues. At one stage I believe 13:39:58

22 Zaentz proposed some kind of joint venture company 13:40:03

23 that would hold the relevant trademarks, and I think 13:40:07

24 we then went back to them with some questions or 13:40:15

25 suggestions about that. And I think there was then 13:40:19

1 a period where each side thought it was waiting to 13:40:22
2 hear from the other. But I don't specifically 13:40:26
3 recall the dates of these various elements or what 13:40:28
4 ultimately transpired. 13:40:32

5 BY MR. ULIN: 13:40:34

6 Q. Do you recall any particular proposals that 13:40:34
7 the Estate made concerning -- again, following the 13:40:51
8 2005 meeting, that the Estate made concerning 13:40:53
9 resolving the Class 16 issues? 13:40:56

10 A. The es- -- no, not as I sit here today. 13:40:58

11 Q. You referred to at one point -- let me just 13:41:13
12 back up a second. 13:41:30

13 You referred to a couple of proposals that 13:41:31
14 Zaentz had -- had made. One of them related to the 13:41:36
15 possibility of assignments or licensing of certain 13:41:43
16 Class 16 rights, correct? 13:41:47

17 A. I don't believe that was Zaentz's proposal. 13:41:48
18 I think that was the Estate's proposal, but I think 13:41:50
19 it preceded -- I think it was a letter from 2004, 13:41:53
20 which is why I didn't mention it. 13:41:56

21 Q. Fair enough. So in the post 2005 period, 13:41:58
22 is the Zaentz proposal that related to a joint 13:42:01
23 venture the only one that you can recall as you sit 13:42:04
24 here today? 13:42:06

25 A. There may have been others. That's the 13:42:06

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1 only one I can specifically recall. 13:42:13

2 Q. Okay. You also referred, when I asked you 13:42:19

3 | what did you remember in the post 2005 time period 13:42:22

4 about the Class 16 issues, to a telephone conference 13:42:25

5 | at one stage. 13:42:30

6	What did you mean by that?	13:42:32
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7 A. My recollection is that the telephone call 13:42:34

8 followed from the joint venture proposal and that we 13:42:39

9 | expressed some concerns and misgivings about that 13:42:44

10 proposal and had some questions about it. That's 13:42:49

11 all I can remember about that call. 13:42:53

12	Q. Following the 2005 meeting in Oxford, when	13:42:58
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13	is the next time you recall communicating with	13:43:03
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14	Zaentz about the Class 16 issues?	13:43:08
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15 MS. ESKENAZI: Objection. Vague and 13:43:11

16	ambiguous.	13:43:12
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17 THE WITNESS: I don't recall the dates. 13:43:13

18 BY MR. ULIN: 13:43:13

19 Q. Okay. If I were to represent to you that 13:43:24

20 there were no substantive communications following 13:43:25

21 that 2005 meeting until mid-2007, at least according 13:43:28

22 to the documents that I've reviewed, is that 13:43:34

23 | consistent with your recollection of the course of 13:43:36

24 | discussions of Class 16 -- 13:43:39

25 MS. ESKENAZI: Objection. 13:43:40

1 BY MR. ULIN: 13:43:40

2 Q. -- between the Estate and Zaentz? 13:43:41

3 MS. ESKENAZI: Objection. Assumes facts 13:43:42

4 not in evidence. 13:43:43

5 THE WITNESS: Well, as I've said, I don't 13:43:43

6 recall the dates, but I do recall that on a couple 13:43:46

7 of occasions both parties acknowledged that they had 13:43:49

8 been busy with other things and there had been 13:43:52

9 delays in reverting to one another. 13:43:54

10 BY MR. ULIN: 13:43:54

11 Q. Okay. As you sit here today, can you 13:43:57

12 recall any communications with Zaentz about Class 16 13:43:59

13 that occurred between the 2005 meeting in Oxford and 13:44:02

14 the meeting in 2007? 13:44:06

15 A. Well, as I've said, I can't remember the 13:44:10

16 dates when the various communications took place. 13:44:14

17 Q. But as you sit here today, you can't recall 13:44:14

18 any communications that occurred between 2005 and 13:44:16

19 2007; is that correct? 13:44:18

20 MS. ESKENAZI: Objection. Asked and 13:44:19

21 answered. 13:44:20

22 THE WITNESS: As I sit here today, I can't 13:44:20

23 identify any particular communication that took 13:44:22

24 place in that period. 13:44:25

25 BY MR. ULIN: 13:44:25

1 Q. Okay. Let's talk about the meeting in 13:44:27

2 London in 2007, and I -- let me -- let me back up 13:44:30

3 and say let's talk about the meeting in 2007. 13:44:32

4 Where did that take place? 13:44:35

5 A. If it's the one I'm thinking of, it was in 13:44:37

6 Manches' London office. 13:44:40

7 Q. And how did that meeting come about? 13:44:42

8 A. It's possible that the Zaentz people were 13:44:44

9 in town anyway for The Lord of the Rings musical 13:44:56

10 premier, but I may be mistaken about that. 13:45:01

11 Q. Who requested the meeting, if you recall? 13:45:06

12 A. I don't recall. 13:45:07

13 Q. Who attended the meeting? 13:45:16

14 A. I remember that Cathleen Blackburn was 13:45:18

15 there, Tom Magnani, Carole Barrett, and there must 13:45:23

16 have been representatives of Zaentz but I can't 13:45:30

17 remember exactly who they were. Again, I'd be -- I 13:45:32

18 could tell you who I think they must have been but I 13:45:36

19 would be speculating. 13:45:38

20 Q. Were there representatives from 13:45:39

21 HarperCollins present? 13:45:45

22 A. I don't recall. 13:45:46

23 Q. Were -- was there anyone else who was not a 13:45:48

24 representative of the Estate, Zaentz or 13:45:52

25 HarperCollins present? 13:45:54

1 A. I don't believe so. 13:45:55

2 Q. Do you recall whether Al Bendich was 13:46:05

3 present? 13:46:07

4 A. I think he must have been. 13:46:07

5 Q. You've met Mr. Bendich? 13:46:14

6 A. I have. 13:46:16

7 Q. And you say you think he must have been. 13:46:17

8 Do you recall that specifically or you're 13:46:20

9 just speculating based on -- well, just speculating 13:46:22

10 that he must have been present, without actually 13:46:25

11 remembering it? 13:46:28

12 A. In the picture I have in my mind's eye of 13:46:28

13 that meeting, I can recall the people I mentioned 13:46:31

14 earlier. But it would make no sense to me that Al 13:46:33

15 Bendich wasn't there, so I'm concluding that he must 13:46:36

16 have been. 13:46:39

17 Q. Do you recall whether Fredrica Drotos was 13:46:40

18 present? 13:46:46

19 A. I don't recall. 13:46:46

20 Q. Okay. You've met Ms. Drotos? 13:46:48

21 A. I believe I have. I can't remember when. 13:46:52

22 And I can't be certain. 13:46:59

23 Q. And then I -- I may have addressed this 13:47:00

24 before, but was -- can you recall anyone else from 13:47:03

25 Zaentz being present at the meeting? 13:47:04

1 A. Well, I know that Mr. Noonan, I think 13:47:06
2 that's his name, often traveled with Al Bendich, so 13:47:15
3 he may have been there. 13:47:18

4 Q. But you don't recall that specifically? 13:47:19

5 A. I don't specifically recall. 13:47:20

6 Q. Okay. What was discussed at the meeting at 13:47:21
7 Manches in London in 2007? 13:47:28

8 A. The two specific issues that I believe I 13:47:30
9 recall are the Class 16 issue and the wish of the 13:47:43
10 Saul Zaentz Company to continue to use the name 13:47:51
11 Tolkien Enterprises after the contractual end period 13:47:56
12 for that. I can't remember the details of that. 13:48:01

13 And the reason that those two points stick 13:48:04
14 in my mind is that it's my recollection that Tom 13:48:08
15 Magnani proposed in some way trading off those two 13:48:16
16 issues after we had understood that Zaentz had 13:48:19
17 already agreed to a proposal about Class 16, which I 13:48:27
18 remember we found disappointing. 13:48:31

19 Q. And do you recall what Mr. Magnani's 13:48:51
20 proposal was? 13:48:55

21 MS. ESKENAZI: Objection. Asked and 13:48:57
22 answered. 13:48:57

23 THE WITNESS: His proposal was to link the 13:49:01
24 two issues. 13:49:03

25 BY MR. ULIN: 13:49:04

1 Q. In what manner? 13:49:04

2 A. I don't recall and I don't recall if he was 13:49:05

3 more specific. 13:49:06

4 Q. And you indicated you at -- the Estate 13:49:09

5 believed that Zaentz had agreed to a Class 16 13:49:13

6 proposal. Why did you believe that? 13:49:16

7 MS. ESKENAZI: Objection. Vague and 13:49:17

8 ambiguous. 13:49:21

9 THE WITNESS: It's my recollection that at 13:49:23

10 some point they had agreed in principal to the 13:49:25

11 proposal that they would assign the marks to us in 13:49:30

12 the most important jurisdictions, but I could be 13:49:33

13 mistaken. That's my recollection. 13:49:37

14 BY MR. ULIN: 13:49:37

15 Q. And as you sit here today, can you recall 13:49:42

16 what the basis was for your belief that Zaentz had 13:49:47

17 agreed in principle to the assignment? 13:49:51

18 MS. ESKENAZI: Objection. Asked and 13:49:54

19 answered. 13:49:55

20 THE WITNESS: Well, it must have arisen out 13:49:56

21 of the course of communications that I described, 13:49:58

22 but I can't remember at exactly what point in that 13:50:00

23 dialogue. 13:50:02

24 BY MR. ULIN: 13:50:02

25 Q. Is there anything else that you can recall 13:50:13

1 about the meeting at Manches in London in 2007? 13:50:16

2 A. I recall that we went to lunch within the 13:50:21

3 office after it, so it must have been in the 13:50:26

4 morning. 13:50:29

5 Q. Anything other than that? 13:50:29

6 A. No. Not as I sit here today. 13:50:34

7 Q. Did Zaentz's joint venture proposal come to 13:50:42

8 you before or after that meeting? 13:50:56

9 A. I believe it was later but I can't be 13:51:01

10 certain. 13:51:07

11 Q. And am I correct in understanding that the 13:51:08

12 Estate did not accept the joint venture pro- - 13:51:17

13 proposal? 13:51:20

14 A. Well, as I said to you earlier, what 13:51:21

15 happened was that we had a call with Zaentz's 13:51:25

16 representatives to say that there were aspects of it 13:51:26

17 that we found troubling. That we had some questions 13:51:29

18 about it. I bel- -- well, my recollection is that 13:51:33

19 they were going to go away and re-think some of 13:51:37

20 those issues. But I believe at some stage they said 13:51:39

21 that they thought we had gone away to re-think some 13:51:42

22 issues. 13:51:45

23 Q. Okay. Who was on the call between you and 13:52:04

24 Zaentz? 13:52:05

25 A. Well, I think it must have been Tom Magnani 13:52:05

1 and Carole Barrett but I can't be certain. 13:52:19

2 Q. And who was on the call for the Estate? 13:52:21

3 A. Myself and Cathleen Blackburn. 13:52:26

4 Q. And did that call take place in 2007? 13:52:35

5 A. I don't recall when that call took place. 13:52:38

6 Q. Was it shortly after the meeting in -- in 13:52:41

7 London at Manches? 13:52:44

8 A. I don't recall. 13:52:45

9 Q. You indicated that at some stage the 13:52:49

10 parties realized that they each thought the other 13:52:53

11 had gone away to re-think some issues. 13:52:56

12 When did that communication occur? 13:52:58

13 A. I don't recall. 13:53:01

14 Q. After the telephone conversation between 13:53:03

15 yourself and Ms. Blackburn on one side and 13:53:13

16 Mr. Magnani and Ms. Barrett on the other side 13:53:17

17 concerning the joint venture proposal, what's the 13:53:20

18 next time you can recall communicating with Zaentz 13:53:23

19 about the Class 16 issues? 13:53:27

20 A. I don't recall when that was. 13:53:34

21 Q. I'm correct in understanding that the Class 13:53:54

22 16 issues remain unresolved today, correct? 13:53:56

23 A. That's correct. 13:53:59

24 Q. And that's why they're the subject of 13:53:59

25 litigation? 13:54:01

1 A. Yes. 13:54:02

2 Q. Okay. Mr. Maier, you're aware that the 13:54:12

3 Estate has -- are you aware that the Estate has 13:54:25

4 taken the position in this case that Zaentz does not 13:54:27

5 have the right to license video games that do not 13:54:30

6 require the purchase of any physical item, but 13:54:32

7 instead can be purchased by download only or 13:54:36

8 accessed on- -- accessed online? 13:54:39

9 A. I'm aware of that, yes. 13:54:40

10 Q. Prior to 2010, did you ever communicate 13:54:44

11 that position to Zaentz? 13:54:47

12 A. I have no reason to communicate that 13:54:52

13 position to Zaentz. 13:54:54

14 Q. So the answer is no? 13:54:54

15 A. So the answer is no. 13:54:56

16 Q. Okay. Are you aware of anyone at the 13:54:57

17 Estate who communicated that position to Zaentz 13:55:00

18 prior to 2010? 13:55:02

19 MS. ESKENAZI: Objection to the extent it 13:55:03

20 calls for attorney-client communication. 13:55:05

21 You can answer the question to the extent 13:55:09

22 that you know outside of any communications you may 13:55:10

23 have had with other attorneys or the clients. 13:55:13

24 THE WITNESS: I'm not aware of any such 13:55:16

25 communication. 13:55:17

1 BY MR. ULIN: 13:55:17

2 Q. Is it fair to say that video game licensing 13:55:20

3 was not a significant focus of your work for the 13:55:24

4 Estate prior to 2010? 13:55:27

5 MS. ESKENAZI: Objection. Vague and 13:55:29

6 ambiguous. 13:55:32

7 THE WITNESS: That is fair to say. 13:55:32

8 BY MR. ULIN: 13:55:32

9 Q. Prior to 2010, on how many occasions can 13:55:34

10 you recall doing work for the Estate on matters 13:55:40

11 related to the licensing of video games? 13:55:41

12 A. I don't recall being instructed in any 13:55:44

13 matters that related to the licensing of video games 13:55:53

14 as I sit here today. 13:55:55

15 Q. Okay. And aside -- leaving aside the 13:55:58

16 question of whether you were instructed in any 13:56:00

17 matters, can you recall working on any matters that 13:56:03

18 related to the licensing of video games prior to 13:56:05

19 2010? 13:56:10

20 MS. ESKENAZI: Objection. Asked and 13:56:10

21 answered. Vague and ambiguous. 13:56:11

22 BY MR. ULIN: 13:56:11

23 Q. You may answer. 13:56:11

24 A. Sorry. Prior to what date? 13:56:12

25 Q. 2010. 13:56:14

1 A. As I sit here today, I don't recall being 13:56:20
2 involved in any such matters. 13:56:21

3 Q. Okay. Prior to 2010, did you have any 13:56:24
4 communications with Zaentz concerning video game 13:56:33
5 licensing? 13:56:38

6 A. I don't recall. 13:56:39

7 Q. As you sit here today, you can't recall 13:56:47
8 having had any communications with Zaentz concerning 13:56:48
9 video game licensing prior to 2010; is that correct? 13:56:51

10 MS. ESKENAZI: Objection. Asked and 13:56:57
11 answered. 13:56:58

12 THE WITNESS: That is correct. 13:56:58

13 MR. ULIN: I'm sorry, we're at 34, is that 13:57:07
14 correct? Okay. Let's mark Exhibit 34. 13:57:16

15 If you can hold it one second. I want to 13:57:30
16 ask a couple of questions before we put the document 13:57:33
17 in front of the witness. 13:57:35

18 Q. Do you recall at the 2005 meeting in Oxford 13:57:36
19 any discussions of a proposal from a company called 13:57:41
20 Turbine for the use of quotes from the Tolkien books 13:57:45
21 in The Lord of the Rings Online video game? 13:57:51

22 A. I do recall an issue over the use of 13:57:58
23 quotes. I don't recall what the context was. 13:58:04

24 Q. Okay. What do you recall about that? 13:58:07

25 A. I recall that Zaentz wanted to use, 13:58:13

1 effectively, text from the works in conjunction with 13:58:17

2 games. 13:58:21

3 Q. Okay. And do you recall seeing a proposal 13:58:24

4 concerning the use of quotes in games, in video 13:58:27

5 games? 13:58:30

6 A. I don't recall that. 13:58:30

7 Q. Do you recall that being discussed at the 13:58:33

8 2005 meeting in Oxford? 13:58:35

9 MS. ESKENAZI: Objection. Asked and 13:58:39

10 answered. 13:58:39

11 BY MR. ULIN: 13:58:39

12 Q. You may answer. 13:58:40

13 A. It's possible. 13:58:42

14 Q. But you don't specifically recall it? 13:58:43

15 A. I don't specifically recall that. 13:58:44

16 Q. Do you specifically recall any 13:58:46

17 communications concerning Zaentz's desire to have 13:58:48

18 quotes from the -- from the books used in video 13:58:56

19 games? 13:58:59

20 A. Well, you have reminded me that that was 13:58:59

21 one of the issues that was discussed in the period 13:59:03

22 that we've been reviewing. But I can't remember now 13:59:05

23 on what occasions that was discussed or what was 13:59:10

24 said about it. 13:59:12

25 MR. ULIN: Let's put Exhibit 34 before the 13:59:13

1 witness. 13:59:15

2 (The document referred to was 13:57:18

3 marked for identification as 13:57:18

4 Exhibit 34 and attached to this 13:57:18

5 deposition.) 13:57:18

6 BY MR. ULIN: 13:59:20

7 Q. Mr. Maier, have you seen Exhibit 34 before? 14:00:43

8 A. I don't recall seeing this. 14:00:45

9 Q. Do you recall one way or another whether 14:00:47

10 this proposal was presented to you at the 2005 14:00:49

11 meeting in Oxford? 14:00:54

12 A. I don't recall that. 14:00:54

13 Q. Are you familiar with a company known as 14:01:11

14 Turbine? 14:01:12

15 MS. ESKENAZI: Objection. Vague and 14:01:14

16 ambiguous. 14:01:16

17 THE WITNESS: I've heard the name. I can't 14:01:16

18 remember in what context. 14:01:19

19 BY MR. ULIN: 14:01:19

20 Q. Okay. Do you recall a discussion of online 14:01:24

21 games at the meeting in Oxford in 2005? 14:01:26

22 A. No. 14:01:29

23 Q. Do you recall anyone at the Estate raising 14:01:31

24 questions with Zaentz about whether the online games 14:01:37

25 that were being discussed in -- in the 2005 meeting 14:01:44

1 in Oxford were -- had any components that were 14:01:49
2 available only online? 14:01:53

3 MS. ESKENAZI: Objection. Vague and 14:01:55
4 ambiguous. Assumes facts not in evidence. 14:01:57

5 THE WITNESS: Yeah, I didn't really 14:01:59
6 understand the question because I -- I don't recall 14:02:00
7 having said that I remembered online games being 14:02:03
8 discussed. 14:02:06

9 BY MR. ULIN: 14:02:06

10 Q. You don't recall any discussion of online 14:02:06
11 games at all at the 2005 meeting in Oxford, correct? 14:02:08

12 A. The only -- 14:02:11

13 MS. ESKENAZI: Objection. Asked and 14:02:11
14 answered. 14:02:12

15 THE WITNESS: The only discussion I 14:02:13
16 remember about games was that one of the Zaentz 14:02:16
17 people concisely presented -- it was kind of an 14:02:18
18 afterthought -- presented some reasons why they 14:02:22
19 would like the Estate to think about them allowing 14:02:24
20 to use quotes, allowing them to use quotes in 14:02:27
21 connection with games because it would make the 14:02:30
22 games more credible and more popular with fans or 14:02:32
23 something along those lines. It was one of those 14:02:34
24 sort of, "Just take this away and think about it" 14:02:36
25 kind of things. 14:02:39

1 BY MR. ULIN: 14:02:40

2 Q. Do you recall anyone from the Estate 14:02:40

3 raising an issue about those games needing to have 14:02:42

4 some physical component or -- in order to be 14:02:47

5 properly licensed by Zaentz? 14:02:49

6 A. No, I'm sure there was no issue about that 14:02:50

7 at that stage. 14:02:53

8 MR. ULIN: Mark Exhibit 35. 14:03:01

9 (The document referred to was 14:03:02

10 marked for identification as 14:03:02

11 Exhibit 35 and attached to this 14:03:02

12 deposition.) 14:03:53

13 BY MR. ULIN: 14:03:54

14 Q. Mr. Maier, have you seen Exhibit 35 before? 14:03:54

15 I'm sorry -- yeah, Exhibit 35. 14:03:57

16 A. I'm -- I may have seen this document or 14:04:06

17 something like it at some stage. I can't be 14:04:08

18 certain. 14:04:11

19 Q. Do you remember specifically when you 14:04:11

20 received this document? 14:04:13

21 A. I don't -- 14:04:13

22 MS. ESKENAZI: Objection. Assumes facts 14:04:15

23 not in evidence. 14:04:17

24 THE WITNESS: I don't remember whether or 14:04:17

25 when I received this document. I said it looks 14:04:19

1 vaguely familiar and that I may have seen a document 14:04:21

2 that was this or like this. 14:04:23

3 BY MR. ULIN: 14:04:23

4 Q. Do you recall receiving this document at 14:04:26

5 the 2007 meeting in London or in connection with 14:04:29

6 that meeting? 14:04:33

7 A. I don't recall that. 14:04:33

8 Q. Do you recall discussing Zaentz's major 14:04:35

9 Lord of the Rings and Hobbit-related licenses at the 14:04:45

10 London meeting in 2007? 14:04:48

11 A. I don't recall that. 14:04:50

12 Q. Do you recall discussing Zaentz's license 14:04:53

13 to Electronic Arts at the London 2007 meeting? 14:05:06

14 A. No. 14:05:13

15 Q. Do you recall discussing the license to 14:05:14

16 Turbine for The Lord of the Rings Online game at the 14:05:17

17 London 2007 meeting? 14:05:20

18 A. Well, if the discussion about use of text 14:05:26

19 related to Turbine, as I think you suggested to me 14:05:30

20 earlier it did, then I think use of text was also 14:05:32

21 discussed at that meeting. 14:05:36

22 Q. And I just want to make it clear, when we 14:05:37

23 talked about use of text, we were talking about a 14:05:39

24 presentation that was made at the 2005 Oxford 14:05:41

25 meeting. Now I'm talking about the London 2007 14:05:44

1 meeting. 14:05:47

2 A. Right. In that case I don't recall. 14:05:47

3 Q. Do you recall any discussion of video games 14:05:59

4 at the London 2007 meeting? 14:06:04

5 A. I don't recall that. 14:06:05

6 Q. As you're sitting here today, you don't 14:06:06

7 recall any -- 14:06:09

8 A. As I sit here today, I don't recall -- 14:06:10

9 Q. -- discussion -- let me finish the question 14:06:12

10 then you can answer. 14:06:13

11 As you're sitting here today, you don't 14:06:13

12 recall any discussion of video games at the London 14:06:17

13 2007 meeting; is that correct? 14:06:18

14 A. I don't recall any such discussion. 14:06:23

15 Q. Did you review any of the press coverage 14:06:29

16 concerning the release of The Lord of the Rings 14:06:31

17 Online game in 2007? 14:06:32

18 A. No. 14:06:34

19 Q. Have you reviewed press coverage concerning 14:06:36

20 The Lord of the Rings Online game -- let me start 14:06:38

21 the question again. 14:06:43

22 Did you review press coverage concerning 14:06:44

23 The Lord of the Rings Online game around the time of 14:06:46

24 its release, even if you can't remember when that 14:06:48

25 was? 14:06:50

163

1 A. No.

14:06:50

2 (Pages 164 through 174 are
3 marked confidential and are bound
4 under separate cover. The
5 nonconfidential portion of this
6 transcript continues on page 175.)
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1 BY MR. ULIN: 14:23:45

2 Q. Fair enough. When is the first time that 14:23:48

3 you learned about the licensing of Lord of the Rings 14:23:55

4 gambling games? 14:23:58

5 A. September of 2010. 14:23:59

6 Q. And how did you -- what happened in 14:24:04

7 September 2010 that you just referred to? 14:24:11

8 A. My recollection is that I turned on my 14:24:12

9 computer one morning and had received a spam e-mail 14:24:18

10 from a casino offering Lord of the Rings online 14:24:22

11 slot. 14:24:28

12 Q. And what did you do when you received that 14:24:35

13 e-mail? 14:24:36

14 A. I believe that the first thing I did was to 14:24:36

15 forward the e-mail to Fredrica Drotos at Zaentz 14:24:44

16 asking her whether or not this was authorized by 14:24:49

17 Zaentz. 14:24:54

18 Q. And did you get a response from Ms. Drotos? 14:24:57

19 A. My recollection is I did not get an 14:25:00

20 immediate response, but she replied some weeks 14:25:04

21 later. 14:25:07

22 Q. And what did she tell you? 14:25:12

23 A. By that stage it had been established that 14:25:17

24 Zaentz and/or Warner were aware of and had approved 14:25:23

25 this licensing and, therefore, her e-mail didn't 14:25:26

1 answer that question, but as I recall, referred to a 14:25:31
2 telephone call that she was proposing to discuss the 14:25:39
3 issue. 14:25:41

4 Q. And in what manner did you come to learn 14:25:42
5 that the online slots of which you became aware had 14:25:48
6 been licensed by Zaentz and/or Warner? 14:25:54

7 A. My recollection is that I conducted my own 14:25:57
8 Internet search for this game, established that a 14:26:04
9 number of different casinos were offering it, all of 14:26:08
10 which were stating or asserting trademarks and 14:26:12
11 copyrights on behalf of Zaentz and/or Warner, which 14:26:18
12 led me to believe that this was not -- the one I had 14:26:23
13 received was not an isolated case where someone had 14:26:26
14 perhaps forged that, and this was, therefore, 14:26:29
15 authorized by them. 14:26:32

16 Q. Did you make inquiries into whether there 14:26:34
17 were other licenses by Zaentz and/or Warner for 14:26:38
18 gambling games, whether online or otherwise? 14:26:43

19 A. My recollection is that the matter was 14:26:46
20 placed in the hands of the -- of the Estate's U.S. 14:26:48
21 attorneys at that point. 14:26:52

22 Q. And when you say "the Estate's U.S. 14:26:55
23 attorneys," you're referring to the Greenberg 14:26:56
24 Glusker firm? 14:26:58

25 A. Yes. 14:26:59

1 Q. Were you aware of any licensing by Zaentz 14:27:15
2 and/or Warner of gambling games prior to September 14:27:20
3 2010? 14:27:27

4 A. I don't believe so. 14:27:27

5 Q. Have you seen trademark registrations by 14:27:34
6 Zaentz for Lord of the Rings and Hobbit-related slot 14:27:39
7 machines in Japan dating to 1980 or '82? 14:27:44

8 A. I don't recall seeing that. 14:27:47

9 Q. You don't recall -- you -- one way or 14:27:48
10 another having seen those? 14:27:51

11 A. As I sit here today, I don't recall one way 14:27:52
12 or another having seen that. 14:27:55

13 Q. Were you aware of licenses to three -- at 14:27:56
14 least three separate companies for their production 14:28:04
15 of Lord of the Rings-related slot machines or 14:28:06
16 Pachinko machines dating well before September of 14:28:11
17 2010? 14:28:15

18 A. I'm sorry, I don't know what Pachinko is. 14:28:18

19 Q. A form of -- of betting game; not a slot 14:28:20
20 machine but another type of machine? 14:28:24

21 A. I wasn't aware of any such licenses. 14:28:27

22 Q. I -- I'm not sure I got the exact 14:28:31
23 description of Pachinko right. 14:28:32

24 MS. ESKENAZI: I'm going to interpose an 14:28:34
25 objection -- a late objection as vague and 14:28:36

1 ambiguous. 14:28:38

2 MR. ULIN: Fair enough. And I'm going to 14:28:38

3 gladly say I would probably have a difficult time 14:28:46

4 describing Pachinko. 14:28:49

5 MS. ESKENAZI: Okay. 14:28:49

6 MR. ULIN: I'm probably better off that 14:28:50

7 way. 14:28:51

8 Q. Are you aware of the production of Lord of 14:28:54

9 the Rings slot machines in Japan dating back well 14:29:02

10 before September of 2010? 14:29:09

11 A. No. 14:29:12

12 Q. In the U.K.? 14:29:14

13 A. No. 14:29:15

14 Q. In the United States? 14:29:15

15 A. No. 14:29:17

16 Q. Is there someone at the Estate who would be 14:29:23

17 responsible for reviewing the trademark 14:29:28

18 registrations and licensing and informing themselves 14:29:32

19 of the existence of these marks and licenses for 14:29:36

20 gambling-related games dating back well before 14:29:38

21 September of 2010? 14:29:43

22 MS. ESKENAZI: Objection. Vague and 14:29:44

23 ambiguous. Assumes facts not in evidence. 14:29:45

24 THE WITNESS: When you say "the trademark 14:29:46

25 licensing," do you mean Zaentz's trademark 14:29:48

1 licensing? 14:29:50

2 BY MR. ULIN: 14:29:50

3 Q. Yes. 14:29:52

4 MS. ESKENAZI: Same objections. Vague and 14:29:52

5 ambiguous. Assumes facts not in evidence. Calls 14:29:54

6 for speculation. Lacks foundation. 14:29:57

7 BY MR. ULIN: 14:29:57

8 Q. You may answer. 14:29:59

9 A. I'm not aware of anyone who would have 14:30:00

10 proactive responsibility of that kind. But it would 14:30:02

11 probably fall within the overview of Cathleen 14:30:05

12 Blackburn. 14:30:08

13 Q. Do you know whether Ms. Blackburn was 14:30:11

14 aware, prior to September 2010, of any of the 14:30:14

15 trademarks or licenses in Lord of the Rings-related 14:30:18

16 gambling games that I referred to in the course of 14:30:21

17 this questioning? 14:30:24

18 MS. ESKENAZI: Objection to the extent it 14:30:25

19 calls for attorney-client communications. 14:30:26

20 If you can answer the question without 14:30:28

21 referring to communications you had with 14:30:30

22 Ms. Blackburn or any other lawyers, you're welcome 14:30:32

23 to answer it. 14:30:36

24 BY MR. ULIN: 14:30:36

25 Q. You may answer. 14:30:37

1 A. I'm not aware. 14:30:39

2 Q. Okay. It's also the Estate's position that 14:30:45

3 licensing slot machines or physical gambling games 14:30:47

4 is beyond the rights that were granted to Zaentz 14:30:53

5 under the relevant agreements, correct? 14:30:56

6 MS. ESKENAZI: Objection. Compound. Vague 14:30:59

7 and ambiguous. 14:31:03

8 THE WITNESS: Well, it's the Estate's 14:31:03

9 position that the physical casino slot machines are 14:31:05

10 also outside the grounds of rights. 14:31:10

11 BY MR. ULIN: 14:31:10

12 Q. What's the basis for that position? 14:31:12

13 MS. ESKENAZI: Objection. Calls for a 14:31:17

14 legal conclusion. 14:31:17

15 BY MR. ULIN: 14:31:17

16 Q. You may answer. 14:31:18

17 A. They're not articles of tangible personal 14:31:21

18 property, that gambling is not a licensed activity, 14:31:24

19 and that the product being sold to the public is an 14:31:31

20 opportunity to gamble, not the machine. 14:31:37

21 Q. Is it your understanding that slot machines 14:31:40

22 are not articles of personal -- tangible personal 14:31:45

23 property? 14:31:47

24 MS. ESKENAZI: Objection. Asked and 14:31:48

25 answered. 14:31:49

1 THE WITNESS: My view would be that the 14:31:50
2 casino machines are commercial property. 14:31:54

3 BY MR. ULIN: 14:31:54

4 Q. Because they're owned by the casino -- the 14:32:00
5 casino and not by the consumer? 14:32:02

6 A. Because they are designed for the 14:32:07
7 commercial purpose of offering gambling services to 14:32:09
8 the public. They're not a consumer item. 14:32:12

9 Q. Would the same be true of a Lord of the 14:32:17
10 Rings pinball machine in a bar? 14:32:19

11 MS. ESKENAZI: Objection. Calls for a 14:32:27
12 legal conclusion. Incomplete hypothetical. 14:32:28

13 BY MR. ULIN: 14:32:28

14 Q. You may answer. 14:32:30

15 A. It may be. 14:32:31

16 Q. Are you aware of Lord of the Rings pinball 14:32:36
17 machines that had been licensed for manufacture? 14:32:38

18 A. As I sit here today I'm not aware of those. 14:32:41

19 Q. Do you know one way or another how long 14:32:47
20 Lord of the Rings pinball machines have been 14:32:49
21 licensed for manufacture? 14:32:50

22 A. I don't have that information. 14:32:51

23 Q. Has the Estate of J.R.R. Tolkien ever 14:32:52
24 raised any objection to Lord of the Rings pinball 14:32:55
25 machines ever? 14:33:00

1 A. I don't know. 14:33:00

2 Q. What about Lord of the Rings-related 14:33:05

3 costumes that belong to a costume shop and are 14:33:06

4 available for rent? How would you characterize 14:33:09

5 those? 14:33:12

6 MS. ESKENAZI: Objection. Calls for a 14:33:12

7 legal conclusion. Incomplete hypothetical. 14:33:13

8 BY MR. ULIN: 14:33:13

9 Q. You may answer, as a lawyer. 14:33:15

10 A. I haven't considered that and would need to 14:33:17

11 consider that. 14:33:19

12 Q. Do you know how long Lord of the 14:33:22

13 Rings-related costumes have been licensed? 14:33:28

14 A. I don't. 14:33:29

15 MS. ESKENAZI: Assumes facts not in 14:33:32

16 evidence. 14:33:32

17 BY MR. ULIN: 14:33:32

18 Q. Do you know whether the Estate has ever 14:33:35

19 raised any objection to Lord of the Rings costumes 14:33:36

20 being licensed because sometimes they're owned by 14:33:38

21 costume shops and rented out? 14:33:42

22 A. I don't know. 14:33:45

23 MR. ULIN: Let's go off the record. 14:33:48

24 THE VIDEOGRAPHER: This is the end of media 14:33:49

25 number 3. Off the record at 2:33 p.m. 14:33:52

1 (Brief recess.) 14:33:56

2 THE VIDEOGRAPHER: We're back on the record 14:42:02

3 at 2:42 p.m. This is the beginning of media number 14:42:11

4 4. Counsel may proceed. 14:42:14

5 14:42:14

6 EXAMINATION 14:42:14

7 BY MR. PETROCELLI: 14:42:21

8 Q. Good afternoon, Mr. Maier. I'm Dan 14:42:21

9 Petrocelli. I represent the Warner parties. 14:42:23

10 A. Good afternoon. 14:42:26

11 Q. When did you arrive in Los Angeles for this 14:42:26

12 deposition? 14:42:28

13 A. On Wednesday of last week. 14:42:28

14 MS. ESKENAZI: Before we get going, did -- 14:42:30

15 did Mr. Zaentz's counsel want to make a -- a comment 14:42:33

16 about whether he's done or not? 14:42:35

17 MR. ULIN: Sure. I'm happy to complete the 14:42:39

18 record. 14:42:40

19 At this point, I and the Saul Zaentz 14:42:41

20 Company have no further questions for Mr. Maier. 14:42:43

21 BY MR. PETROCELLI: 14:42:43

22 Q. How many different days did you spend some 14:42:50

23 time preparing? 14:42:52

24 MS. ESKENAZI: Objection. Asked and 14:42:54

25 answered. 14:42:55

1 THE WITNESS: Two days. 14:42:56

2 BY MR. PETROCELLI: 14:42:56

3 Q. Which days were they? 14:42:57

4 A. Wednesday of this week and yesterday. 14:43:01

5 Q. Any other days besides those two days? 14:43:05

6 A. No. 14:43:08

7 Q. What about before you came to L.A.? 14:43:08

8 A. No. 14:43:12

9 Q. How many hours did you spend? 14:43:13

10 MS. ESKENAZI: Objection. Asked and 14:43:14
11 answered. 14:43:16

12 BY MR. PETROCELLI: 14:43:16

13 Q. Total? 14:43:16

14 A. On the two days in question? 14:43:16

15 Q. Yeah. 14:43:19

16 A. I would say four or five hours on each of 14:43:19
17 the two days, so eight or nine in total. 14:43:21

18 Q. Four to five on each of the days. That 14:43:27
19 comes to eight to ten. 14:43:29

20 A. Excuse me. You're quite right. 14:43:31

21 Q. About how many documents did you review? 14:43:32

22 MS. ESKENAZI: Objection. Asked and 14:43:39
23 answered. 14:43:39

24 BY MR. PETROCELLI: 14:43:39

25 Q. In the eight and ten hours of time? 14:43:40

1 A. I can't estimate the number. It was a pile 14:43:43
2 of documents. 14:43:48

3 Q. More than 100? 14:43:48

4 A. Possibly. 14:43:49

5 Q. I notice that you had very little 14:43:50
6 recollection of anything in the course of Mr. Ulin's 14:43:56
7 examination, and yet you spent eight to ten hours 14:43:59
8 and reviewed over 100 documents. 14:44:05

9 Do you have a problem with your memory, 14:44:10
10 sir? 14:44:10

11 MS. ESKENAZI: Objection. Move to strike 14:44:12
12 all the colloquy. 14:44:13

13 THE WITNESS: I don't have a problem with 14:44:14
14 my memory. 14:44:15

15 BY MR. PETROCELLI: 14:44:16

16 Q. Do you have a good memory? 14:44:16

17 A. I think I have an average -- 14:44:18

18 MS. ESKENAZI: Objection. 14:44:18

19 THE WITNESS: -- memory. 14:44:19

20 BY MR. PETROCELLI: 14:44:19

21 Q. You're a lawyer, right? 14:44:19

22 A. I'm a lawyer. 14:44:22

23 Q. Your whole career? 14:44:23

24 A. Yes. 14:44:25

25 Q. Have you ever done anything else other than 14:44:26

1 practice law? 14:44:27

2 MS. ESKENAZI: Objection. Vague and 14:44:30

3 ambiguous. 14:44:32

4 THE WITNESS: Not since I qualified as a 14:44:32

5 lawyer. 14:44:34

6 BY MR. PETROCELLI: 14:44:34

7 Q. What about before then? 14:44:34

8 A. Well, Saturday and vacation jobs. 14:44:35

9 Q. Have you been attempting to minimize your 14:44:40

10 knowledge in order to avoid disclosing information 14:44:43

11 in this deposition, sir? 14:44:46

12 MS. ESKENAZI: Objection. Argumentative. 14:44:48

13 Vague and ambiguous. 14:44:50

14 THE WITNESS: No. 14:44:52

15 BY MR. PETROCELLI: 14:44:52

16 Q. How long have you known Cathleen Blackburn? 14:44:54

17 A. Since 1997. 14:44:57

18 Q. Okay. So that's 2007, 2000- -- so what's 14:45:02

19 that, 16, 17 years? 14:45:05

20 A. Yes. 14:45:07

21 Q. And you have been practicing -- you left -- 14:45:10

22 the two of you left your law firm together and 14:45:13

23 joined your own -- made up your own firm, right? 14:45:16

24 MS. ESKENAZI: Objection. Compound. Vague 14:45:18

25 and ambiguous. 14:45:22

1 THE WITNESS: We did set up our own firm, 14:45:22

2 yes. 14:45:22

3 BY MR. PETROCELLI: 14:45:22

4 Q. And it's just the two of you, right? 14:45:25

5 A. We're the only two partners. 14:45:28

6 Q. So fair to say you have a pretty close 14:45:32

7 working relationship with Ms. Blackburn, right? 14:45:34

8 MS. ESKENAZI: Objection. It's vague and 14:45:37

9 ambiguous. 14:45:38

10 THE WITNESS: Well, I don't quite know what 14:45:38

11 that means. 14:45:40

12 BY MR. PETROCELLI: 14:45:40

13 Q. Why don't you know what that means? 14:45:40

14 A. Because -- 14:45:42

15 MS. ESKENAZI: Objection. Vague and 14:45:42

16 ambiguous. 14:45:44

17 BY MR. PETROCELLI: 14:45:44

18 Q. What do you think it means? 14:45:44

19 A. Well, it's -- it's a subjective question, 14:45:45

20 what "fairly close" means. 14:45:48

21 Q. Well, what do you think it means? 14:45:49

22 MS. ESKENAZI: Objection. Vague and 14:45:51

23 ambiguous. 14:45:54

24 THE WITNESS: I don't know what I think it 14:45:54

25 means. 14:45:55

1 BY MR. PETROCELLI: 14:45:55

2 Q. Do you have a close working relationship 14:45:56

3 with her? 14:45:57

4 MS. ESKENAZI: Objective -- objection. 14:45:58

5 Vague and ambiguous. 14:46:00

6 THE WITNESS: We have the same working 14:46:01

7 relationship that I imagine any two-partner practice 14:46:02

8 would have. 14:46:06

9 BY MR. PETROCELLI: 14:46:06

10 Q. Can you answer my question now, sir? 14:46:07

11 A. I don't think I can. 14:46:08

12 Q. Why not? You don't know what those words 14:46:09

13 mean? 14:46:11

14 MS. ESKENAZI: Objection. Vague and 14:46:12

15 ambiguous. And asked and answered. 14:46:13

16 THE WITNESS: I don't really -- 14:46:17

17 BY MR. PETROCELLI: 14:46:17

18 Q. You understand that if we can't compel you, 14:46:18

19 we're going to play this deposition, this video 14:46:19

20 deposition to the jury in this case, and I just -- 14:46:23

21 I'm going to give you one last chance to tell the 14:46:26

22 jury when they watch this video, do you have a close 14:46:29

23 working relationship with Ms. Blackburn? Yes or no, 14:46:32

24 sir? 14:46:32

25 MS. ESKENAZI: Move to strike all the 14:46:36

1 colloquy and prep that counsel is making. It's been 14:46:37

2 asked and answered. It's vague and ambiguous. If 14:46:40

3 you want to rephrase the question or explain it to 14:46:42

4 the witness, what you mean -- 14:46:44

5 MR. PETROCELLI: No, because the witness 14:46:46

6 knows exactly what it means. 14:46:48

7 MS. ESKENAZI: No, actually, probably 14:46:49

8 nobody in this room knows what you mean, Dan, but -- 14:46:51

9 MR. PETROCELLI: That's laughable. 14:46:54

10 MS. ESKENAZI: -- you can either explain it 14:46:54

11 or not. It's your choice. 14:46:57

12 MR. PETROCELLI: Can't wait for the jury to 14:46:57

13 hear that, too. 14:46:59

14 Q. You -- you're sitting here under oath 14:46:59

15 telling me, telling the jury and telling the federal 14:47:01

16 judge, who may have an opportunity to watch this, 14:47:04

17 that you don't know what it means when I ask you do 14:47:06

18 you have a close working relationship with your one 14:47:08

19 and only law partner that you see every single day 14:47:09

20 of the week? 14:47:12

21 MS. ESKENAZI: Same objections and 14:47:16

22 compound. 14:47:19

23 THE WITNESS: I have a working relationship 14:47:19

24 with Cathleen Blackburn. The word "close" is 14:47:20

25 clearly subjective. 14:47:23

1 BY MR. PETROCELLI: 14:47:23

2 Q. How would you characterize it, sir? 14:47:25

3 A. We have the same working relationship that 14:47:26

4 I imagine any other two partners in a firm would 14:47:28

5 have. 14:47:30

6 Q. I'm -- I'm not asking you to imagine 14:47:31

7 anything, and you have no idea what my working 14:47:32

8 relationship is with any of my partners, do you? 14:47:35

9 A. But you just -- 14:47:37

10 MS. ESKENAZI: Objection -- 14:47:37

11 THE WITNESS: -- asked me to characterize 14:47:38

12 it. 14:47:39

13 MS. ESKENAZI: Objection. Argumentative. 14:47:41

14 BY MR. PETROCELLI: 14:47:42

15 Q. But can -- char- -- characterize it based 14:47:42

16 on your own personal knowledge. 14:47:43

17 How often do you see Ms. Blackburn during 14:47:44

18 the week? 14:47:47

19 A. Most days. 14:47:47

20 Q. Okay. Talk to her most days? 14:47:51

21 A. Yes. 14:47:52

22 Q. Okay. Talk to her about matters related to 14:47:54

23 the Tolkien Estate? 14:47:58

24 A. Yes. 14:47:58

25 Q. Okay. Talk to her since you've been to 14:48:02

1 Los Angeles? 14:48:05

2 A. Yes. 14:48:06

3 Q. Have you -- did you see her every day since 14:48:08

4 you've been to Los Angeles? 14:48:11

5 A. Yes. 14:48:12

6 Q. Are you both staying in the same hotel? 14:48:14

7 A. Yes. 14:48:16

8 Q. Okay. Have you spoken to her since she 14:48:20

9 gave her deposition on Tuesday? 14:48:24

10 A. Yes. 14:48:27

11 Q. Did you have any conversation at all with 14:48:27

12 her about her deposition testimony? 14:48:29

13 MS. ESKENAZI: Objection. It's been asked 14:48:30

14 and answered. Also attorney-client privileged 14:48:32

15 communication. 14:48:35

16 You can answer -- 14:48:36

17 THE WITNESS: No. 14:48:36

18 MS. ESKENAZI: -- to the extent that it 14:48:36

19 doesn't invade the attorney-client privileged 14:48:39

20 communication. 14:48:41

21 BY MR. PETROCELLI: 14:48:41

22 Q. Not one word, sir? 14:48:42

23 A. Not about her testimony. 14:48:43

24 Q. Not -- not one word about what she was 14:48:44

25 asked in her deposition? 14:48:49

1 A. No. 14:48:51

2 MS. ESKENAZI: Objection. Objection. It's 14:48:51

3 been asked and answered. 14:48:53

4 BY MR. PETROCELLI: 14:48:53

5 Q. Have you spoken to the Greenberg Glusker 14:48:58

6 lawyers about the questions that were put to 14:49:01

7 Ms. Blackburn in the deposition? 14:49:03

8 MS. ESKENAZI: Objection. Attorney-client 14:49:05

9 privilege. Instruct not to answer. 14:49:06

10 BY MR. PETROCELLI: 14:49:06

11 Q. I think you said that in September 2010 you 14:49:12

12 first heard about this gambling issue? 14:49:20

13 A. That's when I received the spam e-mail. 14:49:24

14 Q. And soon thereafter, after communicating 14:49:27

15 with the folks at Zaentz, as you testified, you came 14:49:32

16 to understand the Zaentz position, that it disagreed 14:49:39

17 with your position, correct? 14:49:42

18 MS. ESKENAZI: Objection. Vague and 14:49:45

19 ambiguous. Assumes facts not in evidence. 14:49:45

20 THE WITNESS: No, that wasn't Zaentz's 14:49:50

21 initial position. 14:49:51

22 BY MR. PETROCELLI: 14:49:51

23 Q. Zaentz wrote you a letter ind- -- take -- 14:49:52

24 taking positions that it believed it had rights to 14:49:55

25 do the gambling games, correct? 14:49:58

1 MS. ESKENAZI: Objection. Misstates the 14:50:00
2 evidence. Assumes facts not in evidence. 14:50:01

3 THE WITNESS: Are you referring to the 14:50:04
4 correspondence between the U.S. attorneys? 14:50:05

5 BY MR. PETROCELLI: 14:50:05

6 Q. I'm referring to correspondence on which 14:50:08
7 you were copied, sir. 14:50:10

8 A. I don't recall exactly who received which 14:50:12
9 letters. 14:50:14

10 Q. Well, I didn't ask you that question, did 14:50:14
11 I? I asked you did you become aware that Zaentz 14:50:17
12 disagreed with the Estate's position that it did not 14:50:21
13 have rights to do the gambling machines? 14:50:25

14 A. At some -- 14:50:28

15 MS. ESKENAZI: Object- -- 14:50:28

16 THE WITNESS: -- point. 14:50:29

17 BY MR. PETROCELLI: 14:50:29

18 Q. Okay. 14:50:29

19 MS. ESKENAZI: Objection. Misstates the 14:50:30
20 testimony. 14:50:31

21 BY MR. PETROCELLI: 14:50:31

22 Q. And at some point, certainly by the end of 14:50:32
23 2010, correct? 14:50:35

24 A. I believe so. 14:50:38

25 Q. Okay. And you also became aware of the 14:50:40

1 position of Zaentz, that it had the rights to 14:50:44

2 merchandise the online video and computer games, 14:50:49

3 correct? 14:50:49

4 MS. ESKENAZI: Objection. Vague and 14:50:57

5 ambiguous. 14:50:57

6 THE WITNESS: Yes. 14:50:57

7 BY MR. PETROCELLI: 14:50:57

8 Q. And you were aware of the Zaentz position 14:50:58

9 in that regard also by the end of 2010, right? 14:51:01

10 MS. ESKENAZI: Objection. Vague and 14:51:07

11 ambiguous. 14:51:08

12 THE WITNESS: Yes. 14:51:08

13 BY MR. PETROCELLI: 14:51:08

14 Q. And indeed those are the issues that have 14:51:11

15 now brought us into litigation, correct? 14:51:14

16 A. Those are some of the issues. 14:51:19

17 Q. Okay. Now, you said you're a director of 14:51:20

18 the -- what is it, the Tolkien Estate Limited? 14:51:25

19 A. Correct. 14:51:28

20 Q. Okay. Did you, as a director, meet with 14:51:31

21 the other directors and make a decision to file this 14:51:34

22 lawsuit? 14:51:37

23 MS. ESKENAZI: Objection. Assumes facts 14:51:38

24 not in evidence. Vague and ambiguous. 14:51:40

25 THE WITNESS: No. 14:51:41

1 BY MR. PETROCELLI: 14:51:41

2 Q. Was there any meeting among the directors 14:51:43

3 of the Tolkien Estate Limited or its predecessor 14:51:46

4 name? Was that Fourth Estate Limited or something 14:51:51

5 like that? I don't have the complaint in front of 14:51:55

6 me. What is it? 14:51:57

7 MR. PRIMACK: Fourth Age. 14:51:58

8 MR. PETROCELLI: Fourth Age. Excuse me. 14:51:59

9 MS. ESKENAZI: Objection. Vague and -- 14:52:01

10 BY MR. PETROCELLI: 14:52:01

11 Q. The predecessor name? 14:52:01

12 MS. ESKENAZI: Objection. Vague and 14:52:03

13 ambiguous. 14:52:04

14 THE WITNESS: I'm sorry, what's the 14:52:04

15 question? 14:52:04

16 BY MR. PETROCELLI: 14:52:04

17 Q. Is the predecessor name to Fourth -- to 14:52:05

18 Tolkien Estate Limited, Fourth Age Limited? 14:52:11

19 A. Yes, that is correct. 14:52:13

20 Q. Were you a director of Fourth Age? 14:52:16

21 A. Yes, I was. 14:52:25

22 Q. Okay. So when Fourth Age filed this 14:52:25

23 lawsuit in, I guess, November 2012, were you a 14:52:27

24 director? 14:52:35

25 A. I was. 14:52:35

1 Q. Okay. Did you communicate with your fellow 14:52:39
2 directors about the filing of the case? 14:52:41

3 A. Not in my capacity as a director. 14:52:46

4 Q. Why not? 14:52:49

5 A. Because -- 14:52:49

6 MS. ESKENAZI: Objection. Assumes facts 14:52:52
7 not in evidence. 14:52:52

8 THE WITNESS: Because I was communicating 14:52:55
9 with them in my capacity as a legal advisor. 14:52:57

10 BY MR. PETROCELLI: 14:52:57

11 Q. How do you -- how can they tell which hat 14:53:04
12 you're wearing, if you're the director or the 14:53:07
13 lawyer? 14:53:12

14 MS. ESKENAZI: Objection. Calls for 14:53:14
15 speculation. Lacks foundation. 14:53:17

16 THE WITNESS: I can't speculate on that. 14:53:17

17 BY MR. PETROCELLI: 14:53:17

18 Q. I didn't ask you to speculate. Just 14:53:19
19 because she put the word "speculation" in her 14:53:21
20 objection doesn't mean I'm actually asking you to 14:53:23
21 speculate. That's just the lawyer's objection. You 14:53:27
22 understand that, right? 14:53:29

23 MS. ESKENAZI: Objection. Argumentative. 14:53:32

24 THE WITNESS: They view me as their legal 14:53:34
25 advisor. 14:53:37

1 BY MR. PETROCELLI: 14:53:37

2 Q. So how do they know when you're acting in 14:53:37

3 your capacity as a director? 14:53:40

4 MS. ESKENAZI: Objection. Calls for 14:53:42

5 speculation. Lacks foundation. 14:53:44

6 THE WITNESS: Because I've never undertaken 14:53:46

7 any positive or executive action in the capacity as 14:53:48

8 director. 14:53:51

9 BY MR. PETROCELLI: 14:53:51

10 Q. So even though you're a director and have 14:53:52

11 been since some time, you've never once had a 14:53:56

12 conversation or a communication with your fellow 14:54:00

13 directors in your capacity as a director? 14:54:02

14 A. That's correct. 14:54:04

15 Q. Every single time you've opened your mouth 14:54:05

16 and spoken to them, you've been doing so as a lawyer 14:54:09

17 giving legal advice? Is that your testimony? 14:54:12

18 MS. ESKENAZI: Objection. Compound and 14:54:15

19 argumentative. 14:54:17

20 THE WITNESS: Yes. 14:54:22

21 BY MR. PETROCELLI: 14:54:22

22 Q. And you're taking that position so that you 14:54:24

23 don't have to talk about any of those conversations 14:54:26

24 because you're going to claim they're all 14:54:28

25 privileged, I take it. Is that right? 14:54:31

1 MS. ESKENAZI: Objection. Argumentative. 14:54:33
2 Instruct not to answer. Also calls for a legal 14:54:35
3 conclusion. 14:54:38
4 BY MR. PETROCELLI: 14:54:38
5 Q. Do you have a written retainer agreement 14:54:47
6 with your clients? 14:54:48
7 A. I believe we do. 14:54:49
8 Q. Okay. Do you have any kind of -- effective 14:54:51
9 only since you and Cathleen started the firm; is 14:54:57
10 that right? 14:54:57
11 A. Maier Blackburn has what's called an 14:55:03
12 engagement letter with the clients. 14:55:05
13 Q. Yeah, and prior to that point you had no 14:55:06
14 letter, right? 14:55:08
15 MS. ESKENAZI: Objection. Calls for 14:55:09
16 speculation. Lacks -- 14:55:10
17 THE WITNESS: I'm sure Manches -- 14:55:10
18 MS. ESKENAZI: -- foundation. 14:55:10
19 THE WITNESS: -- would have had a -- 14:55:13
20 THE REPORTER: "I'm sure" what? 14:55:13
21 THE WITNESS: Manches -- 14:55:13
22 THE REPORTER: Thank you. 14:55:13
23 THE WITNESS: -- would have had an 14:55:14
24 engagement letter. 14:55:14
25 BY MR. PETROCELLI: 14:55:14

1 Q. You're sure? Are you speculating now or 14:55:15
2 are you sure? 14:55:19

3 A. It was Manches' practice to have an 14:55:20
4 engagement letter. 14:55:22

5 Q. That doesn't respond to my question, okay? 14:55:22

6 Do you know for a fact whether there was an 14:55:27
7 engagement letter? 14:55:29

8 A. No. 14:55:30

9 Q. Okay. Is there any document appointing you 14:55:35
10 as a director? 14:55:38

11 A. There must be. 14:55:41

12 Q. All right. How do you know? 14:55:43

13 A. Because a document would have to be filed 14:55:45
14 at Companies House in London to appoint a director. 14:55:47

15 Q. Whose idea was it to make you a director? 14:55:50

16 MS. ESKENAZI: Objection. Assumes facts 14:55:57
17 not in evidence. Calls for speculation. Lacks 14:55:58
18 foundation. 14:56:02

19 THE WITNESS: I'm not sure I can answer 14:56:02
20 that without revealing privileged information. 14:56:05

21 BY MR. PETROCELLI: 14:56:05

22 Q. Why is that? 14:56:08

23 MS. ESKENAZI: Well, to the extent it does 14:56:09
24 reveal privileged information, I'll instruct you not 14:56:11

25 to answer. Not that question. If there's a why and 14:56:13

1 you know why that is. In other words, if you 14:56:16

2 received information from a lawyer, you can disclose 14:56:21

3 just that without waiving the privilege. 14:56:23

4 THE WITNESS: Would you repeat the 14:56:29

5 question? 14:56:30

6 BY MR. PETROCELLI: 14:56:30

7 Q. I've forgotten the question. 14:56:32

8 A. So have I. 14:56:33

9 Q. Fortunately, we have a reporter. 14:56:35

10 THE WITNESS: Please, would you read back 14:56:38

11 the question. 14:56:38

12 (The reporter read the record 14:56:38

13 as follows: 14:56:38

14 "QUESTION: Whose idea was it 14:55:55

15 to make you a director?") 14:55:56

16 THE WITNESS: I don't recall. 14:56:47

17 BY MR. PETROCELLI: 14:56:47

18 Q. Was it yours? 14:56:49

19 A. No. 14:56:49

20 Q. Have you done anything in your role as a 14:56:56

21 director? We've already established you've not 14:56:59

22 spoken one -- a word. Have you written a word? 14:57:01

23 Have you done anything in your role as a director? 14:57:04

24 A. No. 14:57:08

25 Q. Do you have any financial interest in this 14:57:08

1 case? 14:57:23

2 A. The only financial interest I have in this 14:57:23

3 case is our hourly billing to our client for 14:57:26

4 conducting the case. 14:57:28

5 Q. You're conducting the case? 14:57:30

6 A. I'm sorry, is there a question? 14:57:37

7 Q. You're -- yes. You are conducting the 14:57:41

8 case, question mark? 14:57:43

9 A. Insofar as my firm is involved in this 14:57:45

10 case, we charge on an hourly rate. 14:57:48

11 Q. Including for testifying today? 14:57:52

12 A. Including for being here today, yes. 14:57:59

13 Q. And your preparation time? 14:58:01

14 A. I'm sure we're entitled to charge for that. 14:58:04

15 Q. And your travel time here? 14:58:06

16 A. Also. 14:58:07

17 Q. How many hours have you billed to this 14:58:08

18 matter since it began? 14:58:14

19 A. I don't know. 14:58:17

20 Q. Go back to September 2010. Since that 14:58:18

21 point in time, how many hours have you charged? 14:58:20

22 A. I don't know. 14:58:26

23 Q. Do you have an estimate? 14:58:26

24 A. No. 14:58:28

25 Q. Do you know how many hours you generally 14:58:32

1 charge per year, in total, to all your clients? 14:58:34

2 A. No, I don't have that information here now. 14:58:38

3 Q. Do you bill approximately 2,000 hours per 14:58:44

4 year, as most lawyers typically do? 14:58:46

5 MS. ESKENAZI: Well, objection. Assumes 14:58:49

6 facts not in evidence. 14:58:51

7 MR. PETROCELLI: I said "most." 14:58:52

8 MS. ESKENAZI: It still assumes facts not 14:58:55

9 in evidence. 14:58:55

10 THE WITNESS: I think most lawyers in the 14:58:57

11 U.K. bill somewhat less than lawyers in the U.S. 14:58:58

12 BY MR. PETROCELLI: 14:58:58

13 Q. What -- what would you say has been your 14:59:02

14 average yearly chargeable hours to all clients? 14:59:04

15 MS. ESKENAZI: Objection. Assumes facts 14:59:11

16 not in evidence. 14:59:14

17 THE WITNESS: This is only our second year 14:59:14

18 as Maier Blackburn. 14:59:16

19 BY MR. PETROCELLI: 14:59:16

20 Q. Well, I meant over the last five years, for 14:59:17

21 purposes of deriving the average. 14:59:21

22 MS. ESKENAZI: Objection. Relevance. 14:59:25

23 THE WITNESS: I honestly don't remember. 14:59:30

24 People don't really think about hours in that way in 14:59:32

25 the U.K. 14:59:34

1 BY MR. PETROCELLI: 14:59:34

2 Q. You have no clue? 14:59:38

3 MS. ESKENAZI: Better off for you than for 14:59:38

4 us. 14:59:40

5 BY MR. PETROCELLI: 14:59:40

6 Q. You have no clue? 14:59:41

7 MS. ESKENAZI: Well -- 14:59:44

8 THE WITNESS: Not as I sit here now. 14:59:44

9 (Pages 204 through 206 are
10 marked confidential and are bound
11 under separate cover. The
12 nonconfidential portion of this
13 transcript continues on page 207.)
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204

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1 Q. I notice on your resume you have 15:02:47
2 highlighted your intellectual property expertise 15:02:50
3 followed by commercial matters. You do both of them 15:02:55
4 for this client? 15:02:59
5 A. Yes. 15:02:59
6 Q. Okay. I want -- I want to go back to when 15:03:00
7 you left Manches. 15:03:14
8 MR. ULIN: Dan, excuse me, I just want to 15:03:18
9 make clear that we're no longer in the confidential 15:03:20
10 portion? 15:03:22
11 MR. PETROCELLI: Yeah, we're -- 15:03:22
12 MS. ESKENAZI: Oh, yes. That's fine, yes. 15:03:23
13 BY MR. PETROCELLI: 15:03:29
14 Q. Did you do anything to have copies made of 15:03:29
15 Manches' -- Manches' electronic files? 15:03:34
16 MS. ESKENAZI: Objection. Vague and 15:03:41
17 ambiguous. 15:03:41
18 THE WITNESS: Did I personally? 15:03:43
19 BY MR. PETROCELLI: 15:03:43
20 Q. Yes. 15:03:45
21 A. I did nothing personally to have that done. 15:03:45
22 Q. Did you -- did you direct anybody to do 15:03:50
23 that? 15:03:52
24 MS. ESKENAZI: Well, to the extent it 15:03:54
25 invades the attorney-client privilege, I'll object. 15:03:54

1 But I will let you answer "yes" or "no" to 15:03:59
2 the extent we have a stipulation that it won't waive 15:04:01
3 the privilege. 15:04:04

4 BY MR. PETROCELLI: 15:04:04

5 Q. Okay, wait a second. Who is the client in 15:04:06
6 this privilege assertion that your lawyer just made? 15:04:13

7 MS. ESKENAZI: To the extent he was 15:04:22
8 discussing that with counsel in -- 15:04:23

9 MR. PETROCELLI: I didn't -- 15:04:23

10 MS. ESKENAZI: -- the context of this 15:04:24
11 litigation -- well, he didn't make the -- he didn't 15:04:24
12 assert the privilege. I did. 15:04:26

13 MR. PETROCELLI: Okay. But -- 15:04:27

14 Q. So let me -- let me rewind here, okay? 15:04:29

15 I'm trying to understand what you and your 15:04:32
16 firm did, you and Cathleen, when you left Manches 15:04:36
17 and came over and started your new firm, what you 15:04:40
18 did, if anything, to bring over copies of e-mails 15:04:45
19 and other electronic files? 15:04:47

20 A. We brought over all electronic files 15:04:50
21 relating to live matters. 15:04:54

22 Q. How did you do that? 15:04:55

23 A. The IT department arranged for it to be 15:04:59
24 transferred from one practice management system to 15:05:02
25 the other. 15:05:04

1 Q. Okay. And what do you mean by "live 15:05:05
2 files"? 15:05:11

3 A. Matters on which work was ongoing at the 15:05:11
4 time, as opposed to archived files. 15:05:14

5 Q. Okay. And what about archived files? Were 15:05:16
6 those copied and -- and brought over? 15:05:21

7 A. They weren't copied, they were handed over 15:05:23
8 from one firm to the other and they never left their 15:05:26
9 location. 15:05:29

10 Q. Are you talking about computer tapes or are 15:05:29
11 you talking about boxes of documents? 15:05:34

12 A. Boxes of physical files. 15:05:37

13 Q. Okay. I understand all that because I 15:05:38
14 asked Ms. Blackburn all those questions already, 15:05:42
15 okay? I'm talking about something different now. 15:05:44
16 I'm talking about electronic data. Are you with me? 15:05:47

17 A. I understand what you're saying, yeah. 15:05:52

18 Q. Okay. So you -- just to be clear now, you 15:05:53
19 said that when you left the old firm and started the 15:05:56
20 new firm in the end of 2012, just the end of last 15:05:59
21 year, begin- -- beginning of this year, you had them 15:06:04
22 transfer the active electronic files; is that 15:06:08
23 correct? 15:06:08

24 A. Yes. 15:06:08

25 Q. Okay. And that included active electronic 15:06:13

1 files for the Estate, right, the Tolkien Estate? 15:06:16

2 A. Yes. 15:06:19

3 Q. And what did you do for archived files with 15:06:23

4 respect to the Tolkien Estate? And by "archived," I 15:06:30

5 meant files, electronic files that were not active. 15:06:33

6 A. I was not involved in that. 15:06:37

7 Q. What did your firm do? 15:06:40

8 A. I'm not aware of that. 15:06:43

9 Q. Okay. So right now you're not aware that 15:06:45

10 any of those non-active Tolkien files in electronic 15:06:46

11 form were transferred over to your offices, correct? 15:06:53

12 A. My understanding is that everything that 15:06:58

13 had been in electronic form would have been printed 15:07:00

14 out and put on the physical files to which I 15:07:02

15 referred earlier. 15:07:04

16 Q. Well, that's not my question, sir. I'm not 15:07:05

17 asking about practices and what would have happened. 15:07:07

18 So can you go back and read my question? 15:07:10

19 You're a smart lawyer. I think you 15:07:15

20 understand I didn't ask that question, and it would 15:07:17

21 really make this go more quickly if you stuck to my 15:07:19

22 questions. 15:07:22

23 MS. ESKENAZI: Well, I would -- 15:07:22

24 BY MR. PETROCELLI: 15:07:22

25 Q. Especially given that you're a lawyer and a 15:07:24

1 litigator and you know how to answer and ask 15:07:26

2 questions. 15:07:28

3 MS. ESKENAZI: Objection. Move to strike 15:07:29

4 as argumentative. 15:07:30

5 MR. PETROCELLI: I don't want to go through 15:07:34

6 another day of evasive, nonresponsive answers. 15:07:36

7 Please -- please reask the question. 15:07:39

8 MS. ESKENAZI: Objection. Move to strike 15:07:40

9 as nonresponsive. Move to strike as argumentative. 15:07:41

10 Excuse me. 15:07:47

11 (The reporter read the record 15:07:57

12 as follows: 15:07:57

13 "QUESTION: So right now 15:06:45

14 you're not aware that any of those 15:06:45

15 non-active Tolkien files in 15:06:48

16 electronic form were transferred 15:06:53

17 over to your offices, correct?") 15:06:54

18 THE WITNESS: I don't have any information 15:07:58

19 about that. 15:08:00

20 BY MR. PETROCELLI: 15:08:00

21 Q. Are you aware that any of the non-active 15:08:05

22 electronic files related to Tolkien matters were 15:08:11

23 transferred? Yes or no? 15:08:15

24 A. I don't know. 15:08:16

25 Q. So you have no knowledge on that; is that 15:08:16

1 correct? 15:08:16

2 MS. ESKENAZI: Objection. It's been asked 15:08:19

3 and answered now three times. 15:08:20

4 You may answer again. 15:08:22

5 THE WITNESS: That's correct. 15:08:23

6 BY MR. PETROCELLI: 15:08:23

7 Q. Okay. So, for example, you were shown some 15:08:29

8 e-mails by Mr. Ulin. Take a look at -- oh, this is 15:08:33

9 an example, pick one. 29. Exhibit 29. 15:08:42

10 Bonnie, if you could put that in front of 15:08:45

11 him. 15:08:47

12 Oh, you have the original ones there, 15:08:47

13 Mr. Maier. Do you have that, sir? 15:08:50

14 A. I do. 15:08:58

15 Q. You have in front of you now an e-mail 15:08:58

16 chain that's on the Manches -- that includes you and 15:09:02

17 others, like Ms. Blackburn, at your Manches e-mail 15:09:07

18 addresses. 15:09:10

19 Do you see that? 15:09:11

20 A. Yeah. 15:09:11

21 Q. And you see that the dates are in 15:09:17

22 November 2003? 15:09:20

23 A. Yeah. 15:09:21

24 Q. Okay. Do you know whether this e-mail was 15:09:24

25 included in any electronic files, active electronic 15:09:30

1 files, related to the Tolkien matters that were 15:09:35
2 transferred to your offices? 15:09:41

3 MS. ESKENAZI: Objection. Vague and 15:09:42
4 ambiguous. 15:09:44

5 THE WITNESS: No, I do not know that. 15:09:44

6 BY MR. PETROCELLI: 15:09:44

7 Q. Okay. Do you know whether this e-mail, 15:09:48
8 Exhibit 29, was in an active file for the Tolkiens 15:09:52
9 when you left Manches and started your firm? 15:09:57

10 A. No, I do not know that. 15:10:00

11 Q. Okay. Do you know whether there was an 15:10:09
12 evidence preservation notice given to the Manches 15:10:13
13 firm to save all their electronic files and not 15:10:22
14 delete any data, any file, any e-mail, related to 15:10:26
15 the Tolkiens? 15:10:30

16 MS. ESKENAZI: Well, again, to the extent 15:10:32
17 that that -- this could call for privileged 15:10:33
18 information, I'd like -- I'll let him answer the 15:10:35
19 question "yes" or "no," but I'd like a stipulation 15:10:39
20 that it's not going to waive the privilege. 15:10:41

21 MR. PETROCELLI: Agreed. 15:10:43

22 THE WITNESS: I have a recollect- -- 15:10:45

23 MR. PETROCELLI: Without agreeing with your 15:10:46
24 premise. I'm trying to get through this. 15:10:49

25 MS. ESKENAZI: I understand. 15:10:51

1 MR. PETROCELLI: But you really like to buy 15:10:52

2 those stipulations. I assume you're going to 15:10:53

3 reciprocate. 15:10:55

4 MS. ESKENAZI: I will. 15:10:57

5 THE WITNESS: I have a recollection that 15:10:58

6 something was done in that regard. I can't be 15:10:58

7 precise as to what. 15:11:02

8 BY MR. PETROCELLI: 15:11:02

9 Q. Who did it? 15:11:03

10 A. Cathleen Blackburn had responsibility for 15:11:04

11 that area. 15:11:07

12 Q. What area? 15:11:08

13 A. Ensuring that Tolkien materials were 15:11:11

14 transferred and preserved. 15:11:15

15 Q. You're the -- you're the contentious 15:11:18

16 lawyer. Is that -- is that what it's called? 15:11:21

17 A. I understand it has a different meaning 15:11:23

18 here. 15:11:24

19 Q. What does it mean? 15:11:24

20 A. It means I deal with disputes and dispute 15:11:26

21 resolution. 15:11:28

22 Q. Okay. Can you go to court? 15:11:29

23 A. I don't appear in court. 15:11:30

24 Q. Can you -- do you do what we're doing here, 15:11:33

25 do depositions? 15:11:37

1 A. We don't do depositions in England. 15:11:37

2 Q. Okay. You are -- as a litigator, you're 15:11:43

3 called a solicitor, right? 15:11:45

4 A. I'm a solicitor, yes. 15:11:47

5 Q. Okay. Are there different levels of 15:11:49

6 solicitors? 15:11:50

7 A. No. 15:11:51

8 Q. Okay. You've been a solicitor your whole 15:11:51

9 professional career as a lawyer? 15:11:55

10 A. Yes. 15:11:56

11 Q. Have you ever heard of a -- an evidence 15:11:57

12 preservation notice in the course of your 15:11:59

13 experience? 15:12:03

14 A. That term doesn't mean anything to me. 15:12:03

15 Q. Are you aware of obligations of litigants 15:12:08

16 and their counsel to preserve evidence related to 15:12:11

17 lawsuits? 15:12:16

18 A. Yes, I'm aware of that. 15:12:16

19 Q. Okay. Have you ever seen an evidence 15:12:18

20 preservation memo or notice of any kind that was 15:12:24

21 issued in the Manches firm related to the Tolkiens? 15:12:28

22 MS. ESKENAZI: Objection. Vague and 15:12:32

23 ambiguous. 15:12:34

24 THE WITNESS: I don't recall. 15:12:34

25 MS. ESKENAZI: Also asked and answered. 15:12:35

1 BY MR. PETROCELLI: 15:12:35

2 Q. Did you -- did you write one? Did you 15:12:38

3 prepare one? 15:12:41

4 A. I don't recall doing so. 15:12:41

5 Q. Do you know for a fact whether all of 15:12:43

6 Manches' electronic documents and materials, such as 15:12:51

7 e-mails, related to this dispute going back as far 15:12:55

8 as possible have been preserved in electronic form? 15:13:03

9 MS. ESKENAZI: Objection. Vague and 15:13:09

10 ambiguous. 15:13:11

11 THE WITNESS: I don't know. 15:13:11

12 BY MR. PETROCELLI: 15:13:11

13 Q. You said that there was a practice at 15:13:16

14 Manches to print copies of documents and then put 15:13:24

15 the hard copies in files; is that right? 15:13:33

16 A. Yes. 15:13:35

17 Q. Did you personally print your e-mails and 15:13:36

18 put them in files or did someone do that for you? 15:13:38

19 MS. ESKENAZI: Objection. Compound. 15:13:41

20 THE WITNESS: I would mostly do that -- I 15:13:44

21 would mostly print them myself and then they'd be 15:13:46

22 filed by my assistant. 15:13:49

23 BY MR. PETROCELLI: 15:13:50

24 Q. Now, you don't literally print every single 15:13:50

25 e-mail, do you? 15:13:53

1 MS. ESKENAZI: Objection. Vague and 15:13:55
2 ambiguous. 15:13:57

3 THE WITNESS: If it was on a matter file as 15:13:57
4 opposed to just a personal communication with a 15:14:00
5 colleague, then I would do. 15:14:01

6 BY MR. PETROCELLI: 15:14:01

7 Q. Okay. And, for example, Exhibit 29, this 15:14:04
8 2003 e-mail exchange, was that printed and put into 15:14:08
9 a file? 15:14:13

10 A. I can't recall. 15:14:14

11 Q. If it were printed and put into a file, can 15:14:15
12 you tell us the name of the file? 15:14:25

13 MS. ESKENAZI: Objection. Calls for 15:14:27
14 speculation. Lacks foundation. Assumes facts not 15:14:28
15 in evidence. 15:14:28

16 THE WITNESS: No. 15:14:30

17 BY MR. PETROCELLI: 15:14:30

18 Q. How many files were there? How many 15:14:33
19 separate file names were there for the Tolkien 15:14:36
20 matters when you left Manches and joined your own -- 15:14:38
21 or created your own firm? 15:14:42

22 A. I don't know. 15:14:43

23 Q. Can you estimate? 15:14:45

24 A. No. 15:14:45

25 Q. Was it more than 20? 15:14:47

1 A. I imagine it must be. 15:14:51

2 Q. More than -- more than a thousand? 15:14:52

3 A. I doubt it. 15:14:58

4 Q. When you say "file," for example, in 15:15:00

5 September 2010, let's say, when this issue of 15:15:05

6 gambling arose and then subsequent events evolved, 15:15:10

7 what was the file into which you put documents 15:15:15

8 related to this matter starting in September 2010? 15:15:19

9 MS. ESKENAZI: Objection. Vague and 15:15:23

10 ambiguous. Compound. 15:15:25

11 THE WITNESS: Well, that would be a file 15:15:26

12 with the -- a description of the matter on it. 15:15:28

13 BY MR. PETROCELLI: 15:15:28

14 Q. What was the description of the matter? 15:15:31

15 A. I think it was initially Zaentz-Warner 15:15:41

16 gambling issues, something like that. 15:15:45

17 Q. Who creates the names of the files? You 15:15:47

18 did? 15:15:51

19 A. I don't recall who created that one. 15:15:55

20 Q. How many different people at Manches worked 15:15:56

21 on Tolkien matters as of the time you left the firm? 15:16:02

22 MS. ESKENAZI: Objection. Vague and 15:16:08

23 ambiguous. 15:16:08

24 BY MR. PETROCELLI: 15:16:08

25 Q. Actually, as of September 2010? 15:16:09

1 MS. ESKENAZI: Same objection. Vague and 15:16:16
2 ambiguous. 15:16:19

3 THE WITNESS: There would be three I can 15:16:19
4 immediately think of who would have had current work 15:16:23
5 at that time. There may be others who from time to 15:16:26
6 time did Tolkien work. 15:16:30

7 BY MR. PETROCELLI: 15:16:30

8 Q. Who is the third? 15:16:32

9 A. Someone called Gavin Stenton. 15:16:34

10 Q. Is Gavin still there at Manches? 15:16:37

11 A. I don't know. 15:16:42

12 Q. Do you communicate with him from time to 15:16:42
13 time? 15:16:46

14 A. I don't communicate with him at all. 15:16:46

15 Q. Do you know if he still does Tolkien work? 15:16:47

16 A. I don't know. 15:16:50

17 Q. Why did you leave your -- your old firm? 15:16:51

18 MS. ESKENAZI: Objection. Relevance. 15:16:53

19 THE WITNESS: We wanted to set up our own 15:16:57
20 firm. 15:16:59

21 BY MR. PETROCELLI: 15:16:59

22 Q. Did the reason for your setting up your own 15:17:06
23 firm have anything to do with the Tolkien matters? 15:17:09

24 A. No. 15:17:13

25 Q. You -- but you expected when you set up 15:17:17

1 your firm that the Tolkien clients would follow, 15:17:19

2 right? 15:17:19

3 MS. ESKENAZI: Objection -- 15:17:23

4 THE WITNESS: We hoped they would. 15:17:24

5 MS. ESKENAZI: -- relevance. 15:17:25

6 BY MR. PETROCELLI: 15:17:25

7 Q. Including the work on this case, right? 15:17:27

8 A. Yes. 15:17:27

9 Q. Have you -- since September 2010, have you, 15:17:43

10 personally, done anything to stop the Manches 15:17:47

11 computer systems from deleting or dropping any 15:17:55

12 electronic data related to the Tolkiens? 15:17:58

13 MS. ESKENAZI: Objection. Vague and 15:18:02

14 ambiguous. 15:18:04

15 THE WITNESS: No. 15:18:04

16 BY MR. PETROCELLI: 15:18:04

17 Q. Okay. Do you know if anybody has done so? 15:18:05

18 MS. ESKENAZI: Objection. Calls for 15:18:08

19 attorney-client privileged communications. 15:18:10

20 To the extent you can answer that question 15:18:11

21 without divulging privileged communications, please 15:18:13

22 go ahead and do that. 15:18:17

23 THE WITNESS: I don't know. 15:18:18

24 BY MR. PETROCELLI: 15:18:18

25 Q. When you answered that -- my last question, 15:18:21

1 were you excluding information based on 15:18:23

2 Ms. Eskenazi's objection? 15:18:31

3 A. I'm sorry, I don't understand. 15:18:33

4 Q. Yeah, I -- I need to know when you're 15:18:34

5 answering my questions whether you're answering on 15:18:36

6 the basis of everything that you know or whether 15:18:39

7 you're just answering by excluding. 15:18:41

8 A. I understand. I was not excluding. 15:18:45

9 Q. Okay. And so the answer was you don't know 15:18:48

10 whether anybody has done anything to preserve any of 15:18:56

11 the electronic data at the Manches firm related to 15:18:59

12 this dispute, correct? 15:19:03

13 A. I personally do not have that knowledge. 15:19:04

14 Q. Okay. And even though you were 15:19:13

15 knowledgeable about the obligations of litigants 15:19:16

16 to -- and lawyers to preserve evidence, you did 15:19:19

17 nothing in that regard, correct? 15:19:23

18 MS. ESKENAZI: Objection. Vague and 15:19:25

19 ambiguous. Assumes facts not in evidence. 15:19:26

20 THE WITNESS: I didn't assume a 15:19:30

21 responsibility to do that. 15:19:34

22 BY MR. PETROCELLI: 15:19:34

23 Q. Well, do you know -- and at the same time 15:19:36

24 that you perceived that it wasn't your 15:19:38

25 responsibility, you took no measures to ensure that 15:19:43

1 someone else undertook that responsibility, correct? 15:19:46

2 MS. ESKENAZI: Objection. Misstates the 15:19:50

3 testimony. 15:19:51

4 THE WITNESS: I took no measures is 15:19:53

5 correct. 15:19:54

6 BY MR. PETROCELLI: 15:19:54

7 Q. You took no measures, including measures to 15:19:56

8 ensure that other people would undertake that 15:19:59

9 responsibility to preserve the evidence, correct? 15:20:02

10 A. That's correct. 15:20:04

11 Q. Okay. Have you ever had a meeting with the 15:20:05

12 Greenberg lawyers at the Manches firm? 15:20:15

13 A. Yes. 15:20:24

14 Q. When was that? 15:20:25

15 A. Probably around 2007. 15:20:25

16 Q. Was that the last time? 15:20:40

17 A. As far as I can recall. 15:20:44

18 Q. After 2007 have you ever met with one or 15:20:50

19 more of the Greenberg lawyers in the U.K.? 15:20:57

20 A. Yes. 15:21:01

21 Q. When was that? 15:21:03

22 MS. ESKENAZI: Objection. Vague and 15:21:03

23 ambiguous. Are you referring to just a social 15:21:12

24 meeting or are you saying a business meeting? 15:21:16

25 MR. PETROCELLI: Any meeting. I don't 15:21:18

1 think you're going to go there just for social 15:21:20
2 reasons. 15:21:23

3 MS. ESKENAZI: Well, that's assuming facts 15:21:24
4 not in evidence. 15:21:26

5 MR. PETROCELLI: Maybe you do. Maybe on a 15:21:26
6 vacation you stopped by and said hello. 15:21:27

7 THE WITNESS: There was a purely social 15:21:33
8 meeting about two or three months ago. 15:21:35

9 BY MR. PETROCELLI: 15:21:35

10 Q. Okay. So between 2007 and the purely 15:21:38
11 social meeting two months ago -- who was the purely 15:21:41
12 social meeting with? 15:21:44

13 A. Ms. Eskenazi. 15:21:45

14 Q. Anybody else? 15:21:46

15 A. Ms. Moriarty was there. 15:21:50

16 Q. Anybody else? 15:21:51

17 A. Cathleen Blackburn. 15:21:53

18 Q. Okay. Anybody else? 15:21:57

19 A. No. 15:21:57

20 Q. Okay. Now, you say "purely social meeting" 15:21:58
21 because there were -- there was no business meeting 15:22:01
22 at all during that trip? 15:22:03

23 A. It was a dinner in London and there was no 15:22:05
24 business meeting. 15:22:07

25 Q. Okay. Either -- at any point -- 15:22:08

1 A. Not that I recall. 15:22:10

2 Q. -- during that trip? 15:22:11

3 A. Not that I recall. 15:22:12

4 Q. Okay. So between 2007 and the purely 15:22:13

5 social meeting a couple of months ago, have you had 15:22:16

6 any other meetings with the Greenberg lawyers in the 15:22:20

7 U.K.? 15:22:23

8 A. I don't recall. 15:22:24

9 Q. And do you recall meetings of the Greenberg 15:22:27

10 lawyers there in the U.K. that you did not 15:22:31

11 participate in but knew were taking place? 15:22:36

12 MS. ESKENAZI: Objection. Vague and 15:22:40

13 ambiguous. 15:22:41

14 THE WITNESS: I didn't understand. I'm 15:22:41

15 sorry. 15:22:42

16 BY MR. PETROCELLI: 15:22:42

17 Q. Yeah. In other words, there may have -- 15:22:43

18 they might have been there meeting with 15:22:43

19 Ms. Blackburn but you were not present at the 15:22:45

20 meeting. Are you aware of any such meetings? 15:22:47

21 A. I'm not aware of any such meetings. 15:22:49

22 Q. Okay. Who's -- who's in charge of the IT 15:22:50

23 department at the Manches firm? 15:23:02

24 A. I don't know. 15:23:03

25 Q. Who was in charge when you left? 15:23:04

1 A. The last person to be in charge was Derek 15:23:05

2 Brookes, but he was in the process of leaving at 15:23:11

3 around the same time we did. 15:23:14

4 Q. Did he come with you? 15:23:15

5 A. No. 15:23:16

6 Q. Okay. And who was the managing partner of 15:23:20

7 the firm when you left? 15:23:22

8 A. There were separate managing partners in 15:23:23

9 Oxford and in London. 15:23:27

10 Q. What office did you work? 15:23:28

11 A. Oxford. 15:23:30

12 Q. Oxford? How many lawyers were in the 15:23:30

13 Oxford office when you left? 15:23:32

14 MS. ESKENAZI: Objection. Relevance. 15:23:35

15 THE WITNESS: Approximately 50. 15:23:37

16 BY MR. PETROCELLI: 15:23:37

17 Q. 50? Is there a central server for the 15:23:39

18 various offices? 15:23:44

19 A. I'm sorry, I don't really understand -- 15:23:45

20 Q. Computer server. 15:23:45

21 A. -- what that means. 15:23:46

22 Q. In other words, were you all online with 15:23:47

23 the various offices? 15:23:50

24 MS. ESKENAZI: Objection. Assumes facts 15:23:51

25 not in evidence. Lacks foundation. Calls for 15:23:52

1 speculation. 15:23:55

2 THE WITNESS: There are two offices. 15:23:55

3 BY MR. PETROCELLI: 15:23:55

4 Q. London and Oxford? 15:23:57

5 A. London and Oxford. I don't understand the 15:23:59

6 IT architecture. I don't know. 15:24:01

7 Q. So Brookes, he was in the Oxford office? 15:24:02

8 A. No, London. 15:24:05

9 Q. London? And who was the top IT guy in 15:24:06

10 Oxford? 15:24:09

11 MS. ESKENAZI: Objection. Assumes facts 15:24:09

12 not in evidence. 15:24:10

13 THE WITNESS: My recollection is there was 15:24:12

14 no top IT guy. There was a couple of junior guys 15:24:14

15 whose identities changed from time to time. 15:24:17

16 BY MR. PETROCELLI: 15:24:17

17 Q. Well, their identities don't change. 15:24:20

18 A. The identity of the person in place changed 15:24:22

19 from time to time. 15:24:26

20 Q. Okay. You don't know their names, do you? 15:24:29

21 A. No. 15:24:29

22 Q. Do you know whether -- you mentioned Andy 15:24:33

23 Boose before; is that right? Is that his name? 15:24:36

24 MS. ESKENAZI: Objection. 15:24:39

25 THE WITNESS: I don't believe I mentioned 15:24:40

1 Andy Boose. 15:24:41

2 BY MR. PETROCELLI: 15:24:41

3 Q. Is there such a person? 15:24:42

4 A. I know Andy Boose. 15:24:44

5 Q. Okay. He's at Davis Wright & Tremaine? 15:24:45

6 A. That's correct. 15:24:50

7 Q. And he -- you've communicated with him from 15:24:51

8 time to time on -- on matters related to -- to the 15:24:55

9 Tolkiens? 15:24:58

10 MS. ESKENAZI: Objection. Assumes facts 15:24:59

11 not in evidence. 15:25:00

12 THE WITNESS: I've communicated with him on 15:25:03

13 matters unrelated to the Tolkiens. I can't recall 15:25:07

14 if I've ever communicated with him on matters 15:25:09

15 related to the Tolkiens. 15:25:12

16 BY MR. PETROCELLI: 15:25:12

17 Q. You do know that he has done work and -- 15:25:13

18 Davis Wright & Tremaine has done work on matters 15:25:16

19 related to the Tolkiens? 15:25:19

20 A. I know that Davis Wright Tremaine has, and 15:25:20

21 I know that Andy deals with Cathleen Blackburn. I 15:25:24

22 can't be precise as to what work he and Cathleen 15:25:27

23 have done together. 15:25:32

24 Q. Do you -- did you take any measures to 15:25:33

25 issue an evidence preservation notice to Davis 15:25:34

1 Wright & Tremaine? 15:25:39

2 A. No. 15:25:39

3 Q. Or to Mr. Boose? 15:25:40

4 A. Excuse me? 15:25:42

5 Q. Or to Mr. Boose? 15:25:43

6 A. No. 15:25:44

7 Q. Or to any other American law firms that 15:25:45

8 were representing the Tolkiens? 15:25:47

9 A. No. 15:25:48

10 Q. Do you know whether anybody has? 15:25:49

11 A. I don't know. 15:25:50

12 Q. Let's talk a little bit about your 15:26:11

13 background. 15:26:13

14 You were head of technology and media 15:26:14

15 litigation at Manches for 20 years? 15:26:19

16 A. That sounds right. 15:26:23

17 Q. How did you become specialized in the area 15:26:27

18 of technology and media litigation? 15:26:31

19 MS. ESKENAZI: Objection. Assumes facts 15:26:36

20 not in evidence. Vague and ambiguous. 15:26:36

21 THE WITNESS: I would characterize it as IP 15:26:38

22 and media litigation rather than technology and 15:26:42

23 media litigation. 15:26:43

24 BY MR. PETROCELLI: 15:26:43

25 Q. Why does your -- your resume say technology 15:26:46

1 and media litigation? 15:26:49

2 A. I don't have it in front of me. 15:26:51

3 Q. Well -- 15:26:52

4 A. Perhaps I do. 15:26:53

5 Q. Exhibit 23. 15:26:57

6 A. Yes, I see. Well, that was the name of the 15:27:12

7 department at Manches. But as you can see, I say 15:27:13

8 specializing in both IP and commercial litigation. 15:27:16

9 Q. You were the head of that department, 15:27:18

10 right? 15:27:18

11 A. Yes. 15:27:20

12 Q. How long were you the head of that 15:27:23

13 department? 15:27:26

14 A. I think I took that title in about 2004, 15:27:26

15 2005. 15:27:33

16 Q. Under "Experience," you write: 15:27:34

17 "In-depth experience of 15:27:38

18 copyright, trademark, libel and 15:27:41

19 Internet-related cases, in 15:27:45

20 addition to general commercial 15:27:47

21 litigation and dispute 15:27:49

22 resolution." 15:27:56

23 What type of Internet-related cases have 15:27:56

24 you had experience in? 15:28:00

25 A. I've dealt with infringements of copyright 15:28:03

1 on the Internet, libel on the Internet, domain name 15:28:06

2 cases. 15:28:15

3 Q. Over what period of time? 15:28:15

4 A. A number of years. I can't be precise. 15:28:21

5 Q. And have you become conversant as a result 15:28:28

6 of your in-depth experience in Internet-related 15:28:34

7 cases with basic Internet platforms? 15:28:39

8 MS. ESKENAZI: Objection. Vague and 15:28:48

9 ambiguous. 15:28:49

10 THE WITNESS: I'd have to say not because I 15:28:49

11 don't understand what that expression means. 15:28:51

12 BY MR. PETROCELLI: 15:28:51

13 Q. You've heard of downloading things onto a 15:28:54

14 computer, have you not? 15:28:57

15 A. I've heard that expression, yes. 15:28:58

16 Q. You've downloaded things onto a computer, 15:29:03

17 haven't you? 15:29:06

18 A. I expect so, yes. 15:29:08

19 Q. Do you work at a computer? 15:29:11

20 A. Yes. 15:29:13

21 Q. What kind of computer? 15:29:13

22 A. A PC. 15:29:15

23 Q. Do you have any other computer devices 15:29:18

24 besides a PC? Do you have like an iPad or anything 15:29:21

25 like that? 15:29:25

1 A. I do. 15:29:26

2 Q. Okay. Anything else? 15:29:28

3 A. iPhone. 15:29:30

4 Q. iPhone? Before iPad and iPhone, what did 15:29:32

5 you have? 15:29:38

6 A. Regular mobile phone. 15:29:38

7 Q. Have you -- so back to downloading again, I 15:29:41

8 assume based on -- on your -- your vast experience, 15:29:53

9 that you are aware that people can download games 15:30:00

10 from the Internet onto a computer and play them, 15:30:06

11 correct? 15:30:06

12 MS. ESKENAZI: Objection. Vague and 15:30:10

13 ambiguous. 15:30:11

14 THE WITNESS: I haven't referred to any 15:30:12

15 vast experience. 15:30:14

16 BY MR. PETROCELLI: 15:30:14

17 Q. Well, how about in-depth? 15:30:15

18 MS. ESKENAZI: Objection. Misstates the 15:30:19

19 tes- -- 15:30:20

20 BY MR. PETROCELLI: 15:30:20

21 Q. First two words after the word "experience" 15:30:21

22 on Exhibit 23, your resume? 15:30:22

23 A. I don't think "in-depth" -- 15:30:24

24 MS. ESKENAZI: Objection. 15:30:24

25 THE WITNESS: -- means "vast." 15:30:26

1 MS. ESKENAZI: Objection. Misstates the 15:30:26
2 document. 15:30:29

3 BY MR. PETROCELLI: 15:30:29

4 Q. Again, you know, if you want to draw a 15:30:30
5 distinction between "in-depth" and "vast," fine, 15:30:32
6 I'll take in-depth. I actually like it better. 15:30:37

7 So based on your in-depth experience, have 15:30:42
8 you become generally aware that people can download 15:30:45
9 games from some Internet site onto a computer device 15:30:50
10 and play them? 15:30:56

11 A. I'm aware of that now. 15:30:57

12 Q. Okay. You added the word "now," I noticed. 15:31:01
13 When is now? 15:31:05

14 A. Now is today. 15:31:08

15 Q. Okay. So you became aware of that today 15:31:10
16 for the first time? 15:31:12

17 A. No. 15:31:13

18 Q. Okay. So when did you become aware that 15:31:15
19 people can download games onto a computer device and 15:31:23
20 play them? When did you learn that for the first 15:31:30
21 time? 15:31:32

22 MS. ESKENAZI: Objection. Compound. 15:31:32

23 THE WITNESS: In around September, 15:31:34
24 October 2010. 15:31:36

25 BY MR. PETROCELLI: 15:31:36

1 Q. And how did you learn that in September 15:31:41
2 2010? 15:31:45

3 A. I learned that in connection with this 15:31:45
4 dispute. 15:31:49

5 Q. What does that mean, "in connection with 15:31:49
6 this dispute"? Did somebody tell you? 15:31:53

7 MS. ESKENAZI: Objection. Compound. 15:31:57

8 THE WITNESS: The defendants asserted 15:31:58
9 rights to license downloadable games, which caused 15:32:01
10 me to research what that meant. 15:32:06

11 BY MR. PETROCELLI: 15:32:12

12 Q. What exactly caused you to research what 15:32:12
13 that meant? 15:32:15

14 A. The reference to downloadable games. 15:32:15

15 Q. So prior to September 2010, you were wholly 15:32:17
16 unfamiliar with the concept of downloading of games? 15:32:23

17 A. Yes. 15:32:27

18 Q. Okay. You were aware of video games prior 15:32:31
19 to 2010, right? 15:32:33

20 A. Yes. 15:32:33

21 Q. And you were aware of computer games, games 15:32:36
22 that could be played on a computer, right? 15:32:38

23 A. Yes. 15:32:41

24 MS. ESKENAZI: Objection. Vague and 15:32:41
25 ambiguous. 15:32:41

1 BY MR. PETROCELLI: 15:32:41

2 Q. And you had an iPad, did you not? 15:32:43

3 A. No. 15:32:45

4 Q. When did you get an iPad? 15:32:45

5 A. About three weeks ago. 15:32:47

6 Q. You -- had you ever heard of apps? 15:32:49

7 A. Yes. 15:32:52

8 Q. Well, you had an iPhone, right? Did you 15:32:53

9 get that three weeks ago, too? 15:32:54

10 A. No, I got that in the spring of 2011. 15:32:56

11 Q. Okay. So your testimony, then, in this 15:33:01

12 case is that until September 2010, you had no idea 15:33:04

13 whatsoever that there was such a thing called 15:33:08

14 downloading of games? 15:33:13

15 A. That's correct. 15:33:16

16 MS. ESKENAZI: Objection. Misstates the 15:33:17

17 testimony. 15:33:18

18 BY MR. PETROCELLI: 15:33:18

19 Q. And so your whole -- despite your -- 15:33:18

20 despite being head of technology and media 15:33:21

21 litigation for 20 years, despite having in-depth 15:33:23

22 experience in Internet-related cases, and despite 15:33:27

23 having been appointed a domain name adjudicator by 15:33:32

24 both the World Intellectual Property Organization 15:33:35

25 and Nominet U.K., it never once came to your 15:33:37

1 attention that games could be downloaded and played 15:33:43

2 on a device? 15:33:51

3 MS. ESKENAZI: Objection. It's 15:33:53

4 argumentative. It's compound. 15:33:55

5 THE WITNESS: That's correct. I wasn't 15:33:56

6 aware of that. 15:33:57

7 BY MR. PETROCELLI: 15:33:57

8 Q. And did you ever research that? 15:33:58

9 A. Not until September, October of 2010. 15:34:05

10 Q. Had you ever seen the word "download" 15:34:08

11 between 2000- -- before September 2010? 15:34:12

12 A. Yes. 15:34:14

13 Q. Okay. So when you saw the word "download," 15:34:15

14 did you know what it meant? 15:34:18

15 MS. ESKENAZI: Objection. Vague and 15:34:21

16 ambiguous. 15:34:23

17 THE WITNESS: I know -- I knew that it was 15:34:23

18 a word related to computers. I think it's a word 15:34:27

19 that could have a number of interpretations. 15:34:30

20 BY MR. PETROCELLI: 15:34:30

21 Q. Well, no. I'm not asking you what you 15:34:33

22 think it can mean. 15:34:34

23 When you first heard it, did you ask 15:34:35

24 somebody, "Well, what does that word mean, I've 15:34:37

25 never heard it," or did you look it up in the 15:34:39

1 dictionary? 15:34:41

2 MS. ESKENAZI: Objection. Vague and 15:34:41

3 ambiguous. Compound. Argumentative. 15:34:42

4 THE WITNESS: I didn't look the word up in 15:34:43

5 a dictionary. 15:34:45

6 BY MR. PETROCELLI: 15:34:46

7 Q. Okay. So when you heard it, what, did you 15:34:46

8 read it in a document? 15:34:48

9 A. I can't recall. 15:34:49

10 Q. What year did you first hear the word 15:34:50

11 "download"? 15:34:54

12 A. I have no idea. 15:34:55

13 Q. Was it before September 2010? 15:34:55

14 A. Yes. 15:34:57

15 Q. Well, how far back can you take it? 15:34:59

16 A. I don't know. 15:35:03

17 Q. Tell me the latest point in time when -- 15:35:03

18 when you -- the earliest point in time when you 15:35:07

19 think you might have known of the word "download." 15:35:10

20 MS. ESKENAZI: Objection. Vague and 15:35:12

21 ambiguous. 15:35:14

22 THE WITNESS: I'm unable to do that. 15:35:14

23 BY MR. PETROCELLI: 15:35:14

24 Q. Can you tell me if you knew the word 15:35:16

25 "download" in 2009? 15:35:19

1 MS. ESKENAZI: Objection. Asked and 15:35:21

2 answered. Ambiguous. 15:35:22

3 THE WITNESS: I believe so. 15:35:24

4 BY MR. PETROCELLI: 15:35:24

5 Q. How about 2008? 15:35:26

6 MS. ESKENAZI: Objection. 15:35:29

7 THE WITNESS: I believe so. 15:35:30

8 BY MR. PETROCELLI: 15:35:30

9 Q. Okay. How about 2007? 15:35:32

10 A. I don't recall. 15:35:33

11 Q. So around '07, '08, you think you first 15:35:35

12 encountered the word "download"? 15:35:39

13 A. No, I didn't say that. 15:35:41

14 Q. Well, that's what I'm trying to find out. 15:35:42

15 I don't want to put words in your mouth. I want to 15:35:44

16 get your best testimony. 15:35:47

17 A. As I said, I have no idea when I first 15:35:48

18 heard that word. 15:35:51

19 Q. Well, you do have some idea. We -- we've 15:35:54

20 established that you would have heard of it before 15:35:57

21 2008. So -- 15:36:00

22 MS. ESKENAZI: Objection. Misstates the 15:36:03

23 testimony. 15:36:04

24 BY MR. PETROCELLI: 15:36:04

25 Q. How about 2007? 15:36:06

1 A. I have no more idea than -- 15:36:06

2 MS. ESKENAZI: Objection. Asked and 15:36:09

3 answered. 15:36:09

4 THE WITNESS: -- I've answered. 15:36:08

5 BY MR. PETROCELLI:

6 Q. So to get to 2000- --

7 THE REPORTER: I'm sorry, I didn't hear.

8 "I have no more than I've answered."

9 THE WITNESS: That's it.

10 BY MR. PETROCELLI:

11 Q. So is that where you want to leave it, that 15:36:10

12 before 2008 you have no idea whether you had ever 15:36:20

13 heard or seen the word "download"? 15:36:25

14 A. Yes. 15:36:27

15 Q. Okay. Now, what about the word "online"? 15:36:27

16 Do you have any idea what that means? 15:36:35

17 MS. ESKENAZI: Objection. Vague and 15:36:37

18 ambiguous. 15:36:38

19 THE WITNESS: I believe it can mean a 15:36:38

20 number of things. 15:36:40

21 BY MR. PETROCELLI: 15:36:40

22 Q. Well, in the world of computers, what do 15:36:41

23 you think it means? 15:36:43

24 MS. ESKENAZI: Same objection. 15:36:45

25 BY MR. PETROCELLI: 15:36:46

1 Q. How about this, computer games. Did you 15:36:46
2 ever hear of online computer games? 15:36:50

3 A. Yes. 15:36:51

4 Q. Okay. Tell us what you think that means. 15:36:54

5 A. I believe that means a game that can be 15:36:59
6 played by multiple participants on their own 15:37:02
7 computers. 15:37:05

8 Q. Okay. And when do you think you first 15:37:09
9 heard of that? 15:37:14

10 A. I don't know. 15:37:15

11 Q. Before September 2010? 15:37:17

12 A. Yes. 15:37:22

13 Q. Okay. How far back can we go on that? 15:37:23

14 A. I don't know. 15:37:25

15 Q. How about 2009? 15:37:26

16 A. I don't know. 15:37:30

17 Q. You don't know whether you had ever heard 15:37:30
18 of an online game in -- as of 2009? 15:37:34

19 MS. ESKENAZI: Objection. Asked and 15:37:40
20 answered. 15:37:40

21 THE WITNESS: I think it's -- it's likely 15:37:42
22 that I did, but I can't remember when. 15:37:45

23 BY MR. PETROCELLI: 15:37:45

24 Q. Yeah. Well, you know -- 15:37:45

25 A. If I could remember, I -- 15:37:48

1 Q. I'm not actually asking -- 15:37:48

2 A. -- would tell you. 15:37:49

3 Q. -- you, sir, and I think you understand to, 15:37:49

4 like, really remember the date and what you were 15:37:52

5 doing when you first saw the word. I'm asking for 15:37:54

6 your best recollection -- 15:37:59

7 A. Right. But my best recollection -- 15:37:59

8 Q. -- when it's most likely that you would 15:38:02

9 have had experience with -- with the word and would 15:38:04

10 have used the word or read it in a document and 15:38:06

11 had -- had an understanding of what it means. 15:38:08

12 A. I honestly can't recall. 15:38:11

13 Q. You understand as you're sitting here right 15:38:14

14 now giving -- giving this testimony that there's an 15:38:22

15 issue in this case about your knowledge and how far 15:38:24

16 it goes back regarding online computer games, 15:38:25

17 correct? 15:38:25

18 MS. ESKENAZI: Objection. Argumentative. 15:38:30

19 And assumes facts not in evidence. 15:38:32

20 THE WITNESS: I understand there may be an 15:38:36

21 issue about the Tolkien Estate's knowledge. 15:38:37

22 BY MR. PETROCELLI: 15:38:37

23 Q. And you unders- -- and Tolkien Estate's 15:38:41

24 knowledge, to be clear, of -- of online computer 15:38:42

25 games, downloading of computer games and how far 15:38:49

1 back that knowledge goes, you understand that 15:38:52

2 there's -- that's an issue in this case, correct? 15:38:54

3 A. In general terms of -- 15:38:56

4 MS. ESKENAZI: Objection. Argumentative. 15:38:57

5 Assumes facts not in -- 15:38:58

6 BY MR. PETROCELLI: 15:38:58

7 Q. And you under- -- 15:38:58

8 MS. ESKENAZI: -- evidence. Compound. 15:38:58

9 BY MR. PETROCELLI: 15:38:58

10 Q. And you understand that your knowledge in 15:39:01

11 that regard, or lack thereof, your knowledge in that 15:39:04

12 regard or lack thereof, is relevant, correct? 15:39:10

13 MS. ESKENAZI: Objection. Calls for a 15:39:18

14 legal conclusion. 15:39:19

15 THE WITNESS: I'm not certain to what 15:39:19

16 extent that is relevant. 15:39:21

17 BY MR. PETROCELLI: 15:39:21

18 Q. Well, but you understand that from the 15:39:22

19 standpoint of the defendants, it's an issue in this 15:39:25

20 case how -- how much you know about downloading of 15:39:29

21 games, how much you know about online games, and 15:39:32

22 when you knew about those things. You -- 15:39:35

23 MS. ESKENAZI: Objection. 15:39:35

24 BY MR. PETROCELLI: 15:39:35

25 Q. -- understand that those are issues in this 15:39:38

1 case, correct? 15:39:40

2 MS. ESKENAZI: Objection. Compound. And 15:39:41

3 argumentative. 15:39:42

4 THE WITNESS: If you're telling me from the 15:39:43

5 perspective of the defendants that is an issue, then 15:39:45

6 I accept what you say. 15:39:47

7 BY MR. PETROCELLI: 15:39:47

8 Q. Okay. And so you understand, as you're 15:39:49

9 giving testimony here, you -- you believe it's 15:39:52

10 helpful to the Estate that you don't have knowledge 15:39:56

11 of online games and downloading of games until very 15:40:03

12 recently, correct? 15:40:10

13 A. That's completely -- 15:40:14

14 MS. ESKENAZI: Argumentative. 15:40:14

15 THE WITNESS: -- untrue. 15:40:15

16 MS. ESKENAZI: Argumentative and compound. 15:40:15

17 BY MR. PETROCELLI: 15:40:15

18 Q. I'm not asking -- I'm not, at least right 15:40:17

19 now my question is not whether, in fact, you had 15:40:20

20 such knowledge. My -- my question to you is, you 15:40:22

21 are aware that it is helpful to the position of the 15:40:24

22 Estate to say that you had little or no knowledge 15:40:28

23 until recently, correct? 15:40:33

24 A. No. 15:40:34

25 MS. ESKENAZI: Objection. 15:40:34

1 THE WITNESS: It's helpful to the position 15:40:35
2 of the Estate for me to give truthful testimony, 15:40:36
3 which is what I'm doing. 15:40:39

4 BY MR. PETROCELLI: 15:40:39

5 Q. Well, that wasn't my question, sir. 15:40:41

6 A. Well, that's my answer. 15:40:43

7 Q. Okay, but you're not allowed to answer your 15:40:43
8 questions. You have to answer my questions. Now, 15:40:45
9 if you want to take my deposition, we can do that 15:40:47
10 maybe, okay? But for now it's my turn. 15:40:50

11 MS. ESKENAZI: Move to strike as 15:40:53
12 argumentative. The witness is permitted to give 15:40:54
13 truthful answers to his questions -- to your 15:40:58
14 questions, which he did. 15:41:00

15 BY MR. PETROCELLI: 15:41:00

16 Q. So I'll repeat my question again, okay? 15:41:03

17 You are aware that it is helpful to the 15:41:07
18 position of the plaintiffs in this case that you had 15:41:08
19 little or no knowledge of online games and 15:41:16
20 downloading of games until recently, correct? 15:41:22

21 MS. ESKENAZI: Objection. Argumentative. 15:41:25
22 Vague and ambiguous. Calls for a legal 15:41:28
23 conclusion -- conclusion. Compound. 15:41:31

24 THE WITNESS: I don't have a view about 15:41:32
25 whether it's helpful or unhelpful. 15:41:33

1 BY MR. PETROCELLI: 15:41:33

2 Q. I didn't ask you if you had a view, did I? 15:41:36

3 A. I think you did. 15:41:39

4 Q. Okay. I asked you if you were aware. 15:41:41

5 MS. ESKENAZI: Same objections. 15:41:45

6 BY MR. PETROCELLI: 15:41:45

7 Q. You're an experienced litigator for, what, 15:41:49

8 30 years? And it's your truthful testimony under 15:41:52

9 oath that you have no idea whether it's helpful or 15:41:58

10 hurtful to the plaintiff's position in the case 15:42:03

11 whether you had knowledge of online games and 15:42:06

12 downloading of games early versus late. 15:42:10

13 Is that your testimony? 15:42:14

14 MS. ESKENAZI: Objection. 15:42:14

15 THE WITNESS: Let me put it this way. 15:42:15

16 MS. ESKENAZI: Objection. Argumentative. 15:42:17

17 THE WITNESS: Let me put it this way. In 15:42:18

18 response to the defendants' position that you 15:42:21

19 articulated a moment ago, it would follow that that 15:42:22

20 evidence would be helpful or unhelpful. 15:42:24

21 BY MR. PETROCELLI: 15:42:24

22 Q. What would follow that that would be 15:42:28

23 helpful or unhelpful? That wasn't my question. 15:42:31

24 A. I can see that your point is relevant to 15:42:33

25 the defendants' position that you articulated. 15:42:35

1 Q. Sir, I'm trying to elicit that as you are 15:42:40
2 giving this testimony, you understand that it is 15:42:46
3 helpful to the plaintiff's position in this case 15:42:49
4 that you had little or no knowledge about the 15:42:52
5 downloading of computer games and about online 15:42:55
6 computer games until recently. Now, is that true? 15:42:59

7 A. I -- 15:42:59

8 MS. ESKENAZI: Objection. Argumentative. 15:43:05
9 Asked and answered. Compound. 15:43:06

10 THE WITNESS: I understand the argument, 15:43:08
11 yes. 15:43:08

12 BY MR. PETROCELLI: 15:43:08

13 Q. Have you ever -- ever taken any computer 15:43:24
14 courses? 15:43:28

15 A. No. 15:43:29

16 Q. Have you ever taken any law courses, law 15:43:31
17 studies or seminars or anything that had to do with 15:43:35
18 the Internet? 15:43:41

19 MS. ESKENAZI: Objection. Vague and 15:43:42
20 ambiguous. Compound. 15:43:43

21 THE WITNESS: Not that I recall. 15:43:45

22 BY MR. PETROCELLI: 15:43:45

23 Q. You've had cases involving the Internet, 15:43:46
24 right? 15:43:46

25 A. Yes. 15:43:49

1 Q. In your cases, do you -- is it your -- has 15:43:50
2 it been your practice to prepare yourself and be 15:43:54
3 knowledgeable about the issues in the case? 15:43:58

4 A. Yes. 15:43:59

5 Q. Now, I -- I -- I think I heard you say that 15:44:14
6 you would spot-check from time to time with respect 15:44:18
7 to some of the merchandising uses by -- by Zaentz 15:44:26
8 and others under the -- under the agreements with 15:44:30
9 the Estate. 15:44:33

10 Do you recall that? 15:44:34

11 A. I don't think I said I would spot-check 15:44:34
12 Zaentz's uses. I said I would spot-check, 15:44:37
13 generally. 15:44:40

14 Q. Okay. And you said you would go on Google, 15:44:40
15 maybe? 15:44:46

16 A. Yeah. 15:44:46

17 Q. You even spot-check for mugs, as I recall, 15:44:47
18 right? 15:44:47

19 A. Yeah. 15:44:47

20 Q. How did you do that? How did you 15:44:53
21 spot-check for mugs? 15:44:56

22 A. You would, for example, do a search for 15:44:56
23 Tolkien-branded merchandise. 15:45:00

24 Q. Yep. And then what would come up? 15:45:02

25 MS. ESKENAZI: Objection. Calls for -- 15:45:06

1 BY MR. PETROCELLI: 15:45:06

2 Q. Mugs? 15:45:06

3 MS. ESKENAZI: -- speculation. Incomplete 15:45:07

4 hypothetical. 15:45:09

5 BY MR. PETROCELLI: 15:45:09

6 Q. What would you do after that? 15:45:09

7 A. After what? 15:45:11

8 Q. Well, you would type in, you said, 15:45:12

9 Tolkien-branded merchandise -- 15:45:13

10 A. Yeah. 15:45:16

11 Q. -- into the Google search request and then 15:45:17

12 you'd get a list of entries? 15:45:20

13 A. The search results would generally be 15:45:21

14 people offering a variety of goods, including 15:45:25

15 possibly infringing items. 15:45:29

16 Q. Okay. So when -- by the way, does Zaentz 15:45:31

17 have the right to do mugs? 15:45:35

18 MS. ESKENAZI: Objection. Vague and 15:45:37

19 ambiguous. 15:45:38

20 THE WITNESS: I'm referring to the 15:45:38

21 Tolkien's Estate's own trademarks. 15:45:40

22 BY MR. PETROCELLI: 15:45:40

23 Q. Yeah. I'm saying but when you put 15:45:43

24 Tolkien-branded merchandise, would there -- would it 15:45:45

25 ever produce any results with respect to merchandise 15:45:47

1 licensed by -- by Zaentz? 15:45:50

2 A. Zaentz doesn't have the mark Tolkien. 15:45:52

3 Q. So you only would look for the mark 15:45:54

4 Tolkien? 15:45:56

5 A. Yes. 15:45:56

6 Q. Nothing else? 15:45:57

7 A. And for text from the textbooks. 15:45:58

8 Q. In those search results, though, because 15:46:02

9 the computer doesn't know what's in your state of 15:46:05

10 mind -- 15:46:05

11 A. Right. 15:46:05

12 Q. -- you might see other branded merchandise, 15:46:07

13 right? 15:46:09

14 A. That's possible. 15:46:09

15 Q. Okay. So, for example, you might see video 15:46:11

16 games or computer games might have been in the 15:46:12

17 search results, right? 15:46:15

18 MS. ESKENAZI: Objection -- 15:46:16

19 THE WITNESS: I don't recall ever 15:46:18

20 seeing -- 15:46:18

21 MS. ESKENAZI: -- calls for speculation. 15:46:18

22 THE WITNESS: -- computer games or video 15:46:18

23 games. 15:46:20

24 BY MR. PETROCELLI: 15:46:20

25 Q. You can't -- you're not suggesting that 15:46:20

1 they never showed up, right? 15:46:21

2 MS. ESKENAZI: Objection. Calls for 15:46:22

3 speculation. 15:46:24

4 THE WITNESS: I am suggesting that to the 15:46:24

5 best of my recollection because -- 15:46:25

6 BY MR. PETROCELLI: 15:46:27

7 Q. You actually remember? 15:46:28

8 A. If you would let me finish the answer, the 15:46:29

9 kind of Web sites that I was reviewing were selling 15:46:31

10 merchandise often created by individuals or small 15:46:34

11 businesses who would typically be the kind of 15:46:38

12 infringers and that we would be concerned with, and 15:46:41

13 they would not be producers of video games. 15:46:44

14 Q. In the -- so you never once bothered to, 15:46:46

15 even out of curiosity, check out a video game that 15:46:51

16 Zaentz had licensed to others? 15:46:59

17 A. No. Not until September, October 2010. 15:47:01

18 Q. Even though you had -- you had heard of the 15:47:06

19 launch of such games? 15:47:09

20 MS. ESKENAZI: Objection. Assumes facts 15:47:12

21 not in evidence. 15:47:13

22 THE WITNESS: I don't believe I had. 15:47:13

23 BY MR. PETROCELLI: 15:47:13

24 Q. Never? 15:47:14

25 A. I don't recall ever hearing of the launch 15:47:15

1 of -- 15:47:15

2 Q. They never -- 15:47:15

3 A. -- such games. 15:47:17

4 Q. They never told you about the launch of 15:47:18

5 a -- of an online game, for example? 15:47:20

6 A. I don't recall that. 15:47:22

7 Q. But if they did, would you have known what 15:47:25

8 they're talking about? 15:47:28

9 MS. ESKENAZI: Objection. Incomplete 15:47:29

10 hypothetical. 15:47:32

11 THE WITNESS: As a rule they didn't deal 15:47:32

12 directly with me. 15:47:33

13 BY MR. PETROCELLI: 15:47:34

14 Q. Well, but if they -- if they had said to 15:47:34

15 you one day or wrote to you one day and say, "Hey, 15:47:36

16 you know, you know, Zaentz has made a deal with a 15:47:38

17 company and we're launching an online video game," 15:47:41

18 and if this occurred prior to 2010, would you have 15:47:45

19 known -- would you have understood those words? 15:47:48

20 MS. ESKENAZI: Objection. Calls for 15:47:51

21 speculation. 15:47:51

22 BY MR. PETROCELLI: 15:47:51

23 Q. Let me start there. 15:47:53

24 MS. ESKENAZI: Objection. Calls for 15:47:54

25 speculation. 15:47:54

1 BY MR. PETROCELLI: 15:47:54

2 Q. Would you have generally understood what -- 15:47:56

3 A. I can tell you what -- 15:47:56

4 Q. -- they were saying to you? 15:47:58

5 A. -- I would have understood by those words. 15:47:59

6 Q. Okay. So what would you have understood? 15:48:00

7 A. I would have understood an online game to 15:48:05

8 be one where a player buys a physical disc, puts it 15:48:09

9 into his computer and can then play with other 15:48:16

10 people who've made a similar physical purchase. 15:48:18

11 Q. Are you aware, sir, that that happens to be 15:48:21

12 exactly and precisely the same thing that 15:48:28

13 Ms. Blackburn said at her deposition? 15:48:30

14 MS. ESKENAZI: Objection. Misstates the 15:48:31

15 testimony. 15:48:33

16 BY MR. PETROCELLI: 15:48:33

17 Q. Are you -- 15:48:34

18 A. No, I'm not aware of that. 15:48:34

19 Q. What a coincidence. You and she, who talk 15:48:35

20 to each other every day and work to -- work with 15:48:41

21 each other -- did you ever talk to her about this, 15:48:44

22 by the way? Did you ever -- did you ever share this 15:48:46

23 same interpretation and definition -- 15:48:48

24 MS. ESKENAZI: Objection. 15:48:51

25 BY MR. PETROCELLI: 15:48:51

1 Q. -- of what those words mean? 15:48:52

2 MS. ESKENAZI: Objection. Calls for 15:48:54

3 attorney-client privileged communication. 15:48:55

4 MR. PETROCELLI: I don't think that's an 15:48:56

5 attorney-client privileged conversation. 15:48:58

6 THE WITNESS: If you're -- 15:48:59

7 MS. ESKENAZI: It is. 15:49:01

8 THE WITNESS: -- asking me whether we have 15:49:01

9 agreed to say the same thing in deposition, that is 15:49:03

10 completely untrue. 15:49:05

11 BY MR. PETROCELLI: 15:49:05

12 Q. You mean it's a complete coincidence that 15:49:07

13 you happen to be saying exactly the same thing? 15:49:09

14 MS. ESKENAZI: Mr. Petrocelli, you're 15:49:13

15 misstating the witness' testimony. And you're 15:49:13

16 argumentative. So move on and ask a question. 15:49:18

17 BY MR. PETROCELLI: 15:49:18

18 Q. That's my question. Are you saying it's a 15:49:20

19 coincidence that you and she said exactly the same 15:49:24

20 thing in almost exactly the same words? 15:49:25

21 MS. ESKENAZI: Misstates the testimony. 15:49:27

22 THE WITNESS: I don't know what she said. 15:49:28

23 BY MR. PETROCELLI: 15:49:28

24 Q. Okay. If I told you that she did, would 15:49:29

25 you say that that's a pure coincidence? 15:49:31

1 A. Yes. 15:49:33

2 Q. So when -- and when you were reviewing 15:49:40

3 those hundred-plus documents over those eight to ten 15:49:45

4 hours over the last couple of days, did you see any 15:49:48

5 documents in which there was reference to an online 15:49:52

6 computer game or an online video game? 15:49:59

7 MS. ESKENAZI: Objection. Privilege. You 15:50:01

8 haven't laid the foundation. 15:50:03

9 MR. PETROCELLI: I'm -- that's -- 15:50:05

10 MS. ESKENAZI: You're not entitled to 15:50:05

11 know -- 15:50:07

12 MR. PETROCELLI: That's the question I'm 15:50:07

13 asking. 15:50:09

14 MS. ESKENAZI: Oh, okay. I'm going to 15:50:09

15 instruct the witness not to answer. Insufficient -- 15:50:10

16 insufficient foundation. You're not entitled to 15:50:13

17 that information. You know better than that, 15:50:17

18 Mr. Petrocelli. 15:50:18

19 BY MR. PETROCELLI: 15:50:18

20 Q. Given all -- all the -- given the extreme 15:50:19

21 lack of recollection that you have exhibited 15:50:22

22 throughout these -- this day's questioning, would it 15:50:28

23 be fair to say, and honest and truthful to say that 15:50:33

24 when you saw those hundred or so documents, that 15:50:38

25 they helped refresh your recollection? 15:50:42

1 MS. ESKENAZI: Objection. Argumentative. 15:50:45

2 Assumes facts not in evidence. Misstates the -- 15:50:47

3 mischaracterizes the testimony, earlier testimony of 15:50:50

4 this witness. 15:50:53

5 Do you want to restate that? 15:50:57

6 MR. PETROCELLI: You know, I will. 15:50:58

7 MS. ESKENAZI: Without the colloquy? 15:50:59

8 MR. PETROCELLI: I will. 15:51:00

9 MS. ESKENAZI: Okay. 15:51:01

10 BY MR. PETROCELLI: 15:51:01

11 Q. Would it be fair and truthful and honest to 15:51:04

12 say that when you saw those documents in preparing 15:51:07

13 for the deposition, that they did help you to 15:51:11

14 refresh your recollection, correct? 15:51:15

15 MS. ESKENAZI: Asked and answered. 15:51:17

16 THE WITNESS: No, I don't recall any 15:51:18

17 documents that helped me to refresh my recollection. 15:51:19

18 BY MR. PETROCELLI: 15:51:19

19 Q. I had a feeling you'd say that. 15:51:24

20 So let me get this straight. You hadn't 15:51:28

21 seen those documents in a long time, right? 15:51:31

22 MS. ESKENAZI: Objection. 15:51:36

23 THE WITNESS: I'm not sure which documents 15:51:36

24 you're referring to. 15:51:38

25 BY MR. PETROCELLI: 15:51:38

1 Q. The documents -- do you even remember the 15:51:38
2 documents that you saw? 15:51:39

3 A. I don't particularly remember them. 15:51:40

4 Q. Okay. So right now, a couple of days 15:51:45
5 later, you -- you don't even remember the documents 15:51:47
6 you saw and it was only a couple of days ago; is 15:51:50
7 that -- is that right? 15:51:50

8 A. I don't recall specific documents. We -- 15:51:55

9 Q. Well, you -- 15:51:55

10 A. -- looked at a lot of documents. 15:51:58

11 Q. You don't recall any of them, do you? 15:51:59

12 MS. ESKENAZI: Objection. I'm going to 15:52:00
13 instruct the witness not to answer because you're 15:52:01
14 not entitled to that information. You haven't laid 15:52:03
15 the foundation. As a matter of fact, the foundation 15:52:05
16 has been that you're not entitled to the 15:52:06
17 information. 15:52:08

18 MR. PETROCELLI: I didn't ask -- I didn't 15:52:08
19 ask about the specific documents he saw in that 15:52:11
20 question, even though I don't agree with your -- 15:52:14
21 your analysis of this issue. But let me just plug 15:52:17
22 away here. 15:52:20

23 Q. How many documents can you remember that 15:52:21
24 you saw in the last couple of days since you were 15:52:23
25 preparing for the deposition? 15:52:26

1 MS. ESKENAZI: Asked and answered. 15:52:30

2 You can answer again. 15:52:30

3 THE WITNESS: It was probably more than a 15:52:31

4 hundred pages. 15:52:32

5 BY MR. PETROCELLI: 15:52:32

6 Q. How many can you actually remember? If 15:52:33

7 your lawyer let you answer the question, how many 15:52:35

8 could you sit here and generally describe for us? 15:52:38

9 A. I don't recall. 15:52:41

10 Q. It's not a recollection question. It's a 15:52:42

11 question that calls for, "I can -- I can -- I can 15:52:45

12 think of four that I can describe, I can think of 15:52:48

13 20" or "I couldn't describe a single one." 15:52:53

14 MS. ESKENAZI: Objection. Vague and 15:52:57

15 ambiguous. 15:52:57

16 BY MR. PETROCELLI: 15:52:57

17 Q. Can you answer that question? How many can 15:52:58

18 you -- 15:52:58

19 A. I can't recall -- 15:53:01

20 MS. ESKENAZI: Compound. 15:53:02

21 THE WITNESS: -- any specific documents. 15:53:02

22 BY MR. PETROCELLI: 15:53:02

23 Q. Did you see any e-mails? 15:53:05

24 MS. ESKENAZI: You can answer that "yes" 15:53:08

25 or "no." 15:53:11

1 THE WITNESS: I believe so. 15:53:11

2 BY MR. PETROCELLI: 15:53:11

3 Q. Did you see any documents with the word 15:53:14

4 "online" in them? 15:53:16

5 MS. ESKENAZI: Objection. Instruct not to 15:53:18

6 answer. Privileged. You haven't laid the 15:53:20

7 foundation. 15:53:27

8 BY MR. PETROCELLI: 15:53:27

9 Q. If you saw a document with the word 15:53:29

10 "online" in it, would you agree with me that it 15:53:31

11 would help refresh your recollection as to the date 15:53:33

12 when you first saw the word "online"? 15:53:35

13 MS. ESKENAZI: Objection. Calls -- 15:53:38

14 BY MR. PETROCELLI: 15:53:38

15 Q. Given your testimony that you can't 15:53:40

16 remember, would you agree with that? 15:53:41

17 MS. ESKENAZI: Calls for an incomplete 15:53:44

18 hypothetical. Calls for speculation. 15:53:48

19 THE WITNESS: I'm not sure I understand 15:53:48

20 that. 15:53:49

21 MS. ESKENAZI: Lacks foundation. 15:53:50

22 BY MR. PETROCELLI: 15:53:51

23 Q. If you were shown a document, let's say, in 15:53:51

24 the year 2007, I'll just pick that year, and it had 15:53:53

25 the word "online" in it, and you just saw it in 15:53:57

1 preparing for your deposition and it was one of the 15:53:59
2 documents that your lawyer showed you, would you 15:54:00
3 agree with me that, at the minimum, it would help 15:54:02
4 you to remember that you saw the word "online" in 15:54:05
5 2007? 15:54:07

6 MS. ESKENAZI: Objection. Vague and 15:54:09
7 ambiguous. Incomplete hypothetical. Calls for 15:54:10
8 speculation. Lacks foundation. 15:54:14

9 THE WITNESS: I don't agree with that. It 15:54:15
10 would depend what the focus of the document was. 15:54:18
11 BY MR. PETROCELLI: 15:54:19

12 Q. No, it doesn't depend at all on the focus 15:54:19
13 of the document. 15:54:22

14 A. I don't agree with you. 15:54:23

15 Q. Why don't you agree with me? If -- if -- I 15:54:24
16 asked you earlier today whether you could tell me if 15:54:25
17 you heard of the word or had seen the word in the 15:54:29
18 year 2007, the word "online," and you said you 15:54:31
19 couldn't remember. 15:54:34

20 If you were shown a document a couple of 15:54:36
21 days ago dated in 2007 that had the word "online" in 15:54:38
22 it, would that -- would it not help you remember 15:54:41
23 that you had seen the word "online" in the year 15:54:44
24 2007? 15:54:47

25 A. Not necessarily. Because the fact that the 15:54:47

1 word is in the document may not have had anything to 15:54:50
2 do with the purpose of reading the document. 15:54:53

3 Q. I didn't connect it up to any purpose. I 15:54:54
4 simply asked you whether it would help you to 15:54:57
5 refresh your memory as to the date or timing or year 15:55:00
6 in which you had seen the word "online." 15:55:04

7 MS. ESKENAZI: Objection. 15:55:08

8 BY MR. PETROCELLI: 15:55:08

9 Q. Would you agree that it would refresh your 15:55:08
10 recollection at least to that extent? 15:55:10

11 A. Not necessarily. 15:55:12

12 Q. I didn't say necessarily. 15:55:13

13 A. It could do. 15:55:16

14 Q. Okay. So what documents did you see -- 15:55:17
15 withdrawn. 15:55:22

16 Did you see any documents that had the word 15:55:23
17 "online" in preparing for your deposition? 15:55:27

18 MS. ESKENAZI: Objection. Calls for 15:55:28
19 privilege -- 15:55:31

20 THE WITNESS: I don't recall -- 15:55:31

21 MS. ESKENAZI: Calls for privileged 15:55:32
22 information. Instruct the witness not to answer. 15:55:33

23 You have not laid an adequate foundation. 15:55:39

24 MR. PETROCELLI: I don't -- I -- I'm not 15:55:41
25 going to argue with you. 15:55:43

1 THE WITNESS: Could we take a five-minute 15:55:44
2 break at this point? 15:55:46
3 MR. PETROCELLI: You may. 15:55:46
4 THE WITNESS: Thank you. 15:55:47
5 THE VIDEOGRAPHER: This is the end of media 15:55:47
6 number 4. Off the record at 3:55 p.m. 15:55:49
7 (Brief recess.) 16:02:00
8 THE VIDEOGRAPHER: We are back on the 16:07:11
9 record at 4:09 p.m. This is the beginning of media 16:09:30
10 number 5. Counsel may proceed. 16:09:33
11 BY MR. PETROCELLI: 16:09:33
12 Q. When did you prepare your resume, Exhibit 16:09:37
13 23? 16:09:40
14 A. At the time we set up the new law firm. 16:09:41
15 Q. And just for the record, that is -- you 16:09:45
16 started January 2012, correct? 16:09:53
17 A. Yes, that's correct. 16:09:56
18 Q. Okay. What is the Data Protection Act? 16:10:06
19 A. The Data Protection Act is a U.K. act 16:10:11
20 arising out of a European provision which regards 16:10:16
21 the privacy of data held -- personal data held about 16:10:25
22 individuals in the U.K. 16:10:32
23 Q. And you've done some work with respect to 16:10:33
24 the Data Protection Act? 16:10:35
25 A. A limited amount. 16:10:36

1 Q. And you've -- according to Exhibit 23, you 16:10:38
2 give advice to a medical portal Web site on libel 16:10:45
3 and Data Protection Act claims arising out of online 16:10:50
4 postings. 16:10:54

5 Do you see that? 16:10:56

6 A. That's under "Recent Work Examples," yeah. 16:10:57

7 Q. And you said "recent." How recent? 16:11:00

8 A. Well, obviously prior to 1st of January 16:11:11
9 2012, but I can't remember exactly when. 16:11:15

10 Q. How long have you been advising that 16:11:17
11 client? 16:11:22

12 A. I don't recall. 16:11:27

13 Q. You don't recall -- it was certainly during 16:11:27
14 your Manches years, but you don't remember when you 16:11:34
15 began? 16:11:36

16 A. That's right. 16:11:36

17 Q. Have you ever downloaded a computer game? 16:11:37

18 A. Yes. 16:11:47

19 Q. Only after this dispute arose? 16:11:52

20 A. Yes. 16:11:53

21 Q. Which games did you download? 16:11:55

22 A. I can't remember the name of the game. I 16:11:56
23 downloaded something on my computer at home from 16:12:12
24 something called Steam, which is a downloading 16:12:18
25 service. I don't remember exactly which game it 16:12:21

1 was. A first-person shooter game of some kind. 16:12:22

2 Q. Anything to do with this matter? 16:12:24

3 A. No. 16:12:28

4 Q. Just for enjoyment? 16:12:31

5 A. Yes. 16:12:37

6 Q. Okay. Do -- have you ever -- is that the 16:12:39

7 only time you've downloaded a game? 16:12:40

8 A. I think so, yeah. 16:12:41

9 Q. Have you ever downloaded a movie or TV 16:12:43

10 program? 16:12:49

11 A. Well, we have Netflix but I think that's 16:12:49

12 streaming. And whether that's different from 16:13:02

13 whatever "download" means, I'm not sure. 16:13:03

14 Q. So other than Netflix, have you ever 16:13:05

15 downloaded a movie or television show or some 16:13:08

16 other -- 16:13:11

17 A. No. 16:13:11

18 Q. -- content onto -- onto a device? 16:13:11

19 MS. ESKENAZI: Objection -- 16:13:14

20 THE WITNESS: No. 16:13:14

21 MS. ESKENAZI: -- assumes facts not in 16:13:15

22 evidence. 16:13:16

23 BY MR. PETROCELLI: 16:13:16

24 Q. Have you ever downloaded a song, a tune? 16:13:16

25 A. Yes. 16:13:19

1 Q. When is the first time you did that? 16:13:25

2 A. I can't remember. 16:13:31

3 Q. It was certainly before September 2010, 16:13:32

4 right? 16:13:32

5 A. Oh, yes. 16:13:38

6 Q. And you -- you're familiar with downloading 16:13:38

7 of music. It's been around for -- for years, right? 16:13:41

8 A. Yeah. 16:13:47

9 MS. ESKENAZI: Objection. Vague and 16:13:47

10 ambiguous. 16:13:47

11 BY MR. PETROCELLI: 16:13:47

12 Q. And as an IP lawyer, for example, you had 16:13:48

13 some familiarity with the Napster litigation and 16:13:50

14 cases like that where copyright claims were made 16:13:54

15 with respect to the downloading of music, right? 16:13:57

16 A. I don't recall what those cases were about. 16:14:00

17 Q. But you had some general familiarity that 16:14:02

18 that was an issue that was being litigated? 16:14:04

19 A. No, I don't recall that. 16:14:08

20 Q. Not a clue about that? This is the first 16:14:09

21 time you're hearing it today? 16:14:12

22 A. I have no recollection of knowing about 16:14:13

23 those cases. 16:14:16

24 Q. When is the first time you downloaded a 16:14:17

25 song? 16:14:19

1 MS. ESKENAZI: Objection. Asked and 16:14:19
2 answered. 16:14:20

3 THE WITNESS: I don't recall. 16:14:20

4 BY MR. PETROCELLI: 16:14:20

5 Q. Early 2000 time frame? 16:14:24

6 A. I don't recall. 16:14:26

7 MS. ESKENAZI: Objection. Asked and 16:14:28
8 answered. 16:14:28

9 BY MR. PETROCELLI: 16:14:28

10 Q. Do you have children? 16:14:29

11 A. Yes. 16:14:29

12 Q. How old are they? 16:14:30

13 A. 17, 15 and 13. 16:14:31

14 Q. Have your -- do you know whether your 16:14:34
15 children have ever -- any of them have ever 16:14:38
16 downloaded a song? 16:14:41

17 MS. ESKENAZI: Objection. Calls for 16:14:44
18 speculation. Lacks foundation. 16:14:45

19 THE WITNESS: I don't think any of them has 16:14:46
20 their own account with anybody. Therefore, they 16:14:51
21 would have had to do it through us. 16:14:54

22 BY MR. PETROCELLI: 16:14:54

23 Q. And have they ever done so? Have they ever 16:14:57
24 downloaded music? 16:15:03

25 MS. ESKENAZI: Objection. Vague and 16:15:04

1 ambiguous. 16:15:04

2 BY MR. PETROCELLI: 16:15:04

3 Q. Regardless of whose account it was? 16:15:05

4 A. I recall one occasion on which one of my 16:15:08

5 kids asked me to get a song for him. 16:15:12

6 Q. When was that? 16:15:14

7 A. Three or four years ago. 16:15:15

8 Q. What about downloading of -- of movies? 16:15:20

9 Any of your kids ever do that? 16:15:25

10 A. I don't believe so. 16:15:26

11 Q. What about downloading of computer games or 16:15:27

12 video games? Any of your kids ever do that? 16:15:31

13 A. They play video -- some of them play video 16:15:35

14 games but I don't know the mechanism. They're up in 16:15:37

15 their rooms doing it. 16:15:40

16 Q. Ever ask them? 16:15:41

17 A. No. 16:15:41

18 Q. One second. 16:15:46

19 Earlier you testified that whenever you 16:16:05

20 first heard of online, you believed it meant that 16:16:13

21 a -- whatever was downloaded online had to involve 16:16:21

22 a -- the purchase of a physical disc or cartridge. 16:16:28

23 Do you recall that? 16:16:31

24 MS. ESKENAZI: Objection. 16:16:31

25 THE WITNESS: That wasn't my testimony. 16:16:32

1 MS. ESKENAZI: It misstates the testimony. 16:16:33

2 You need to wait until -- everybody needs 16:16:34

3 to pause. You need to finish your question, you 16:16:36

4 need to let me get my objections in. Because 16:16:39

5 otherwise the court reporter is going to shoot 16:16:42

6 daggers at us. 16:16:44

7 THE WITNESS: She -- she did warn me. I 16:16:45

8 understand. 16:16:46

9 BY MR. PETROCELLI: 16:16:46

10 Q. Why don't you tell me what you did say. 16:16:47

11 A. Sorry. You need to repeat the question. 16:16:53

12 Tell me what you'd like. 16:16:53

13 Q. Yeah. Why don't you tell me what you did 16:16:55

14 say. Do you remember what you -- 16:16:56

15 MS. ESKENAZI: Objection. 16:16:59

16 THE WITNESS: The question before that. 16:17:00

17 BY MR. PETROCELLI: 16:17:00

18 Q. Well, I was asking you about your prior 16:17:01

19 testimony about either online or downloading -- 16:17:03

20 A. Right. 16:17:09

21 Q. -- involving a purchase. 16:17:10

22 Do you recall that? 16:17:12

23 A. Right. I do recall that. 16:17:12

24 Q. And we got into the whole -- 16:17:14

25 A. Yeah. 16:17:17

1 Q. -- question and answer about it being the 16:17:18
2 same as Ms. Blackburn's. 16:17:19

3 Do you recall that? 16:17:21

4 A. Yeah. 16:17:21

5 Q. Okay. So I want to go back to that 16:17:22
6 subject. 16:17:23

7 A. Right. 16:17:23

8 Q. Okay. So why don't you tell me what it 16:17:25
9 is -- repeat for me what you understood playing a 16:17:30
10 game online meant. 16:17:35

11 A. I understood that if you bought a game 16:17:38
12 which would come on a disc, which you would then 16:17:41
13 install on your computer, then you could play with 16:17:44
14 other people who had similarly bought a disc and 16:17:49
15 installed a game on their computer. 16:17:52

16 Q. Okay. And that was something you 16:17:54
17 understood in connection with the playing of games 16:17:56
18 online, which involved playing with other people, 16:17:59
19 correct? 16:17:59

20 A. Yes. 16:17:59

21 Q. Okay. Now, when did you first derive that 16:18:08
22 understanding that you just gave me? 16:18:10

23 MS. ESKENAZI: Objection. Asked and 16:18:12
24 answered. 16:18:13

25 BY MR. PETROCELLI: 16:18:13

1 Q. That playing online required purchase of a 16:18:13
2 disc that you would then install? 16:18:17

3 A. I don't recall. 16:18:20

4 Q. Can you give me a general time frame? 16:18:21

5 A. No. 16:18:23

6 Q. Okay. Is it -- then is it -- would it be 16:18:31
7 your testimony that whenever you saw a reference to 16:18:35
8 an online computer game, you always believed it 16:18:38
9 meant what you just said? 16:18:43

10 MS. ESKENAZI: Objection. 16:18:45

11 BY MR. PETROCELLI: 16:18:45

12 Q. Involving a purchase of a disc -- 16:18:46

13 MS. ESKENAZI: Objection. Misstates -- 16:18:47

14 BY MR. PETROCELLI: 16:18:48

15 Q. -- to be inserted in a device? 16:18:49

16 MS. ESKENAZI: Objection. Misstates the 16:18:51
17 testimony. Vague and ambiguous. 16:18:52

18 THE WITNESS: Until September, October of 16:18:57
19 2010, that's what I understood by an online game. 16:19:03

20 BY MR. PETROCELLI: 16:19:06

21 Q. My -- my questions are before September 16:19:06
22 2010. 16:19:08

23 MS. ESKENAZI: No, actually, your question 16:19:09
24 was always. That's why I said -- 16:19:10

25 MR. PETROCELLI: Fair enough. 16:19:10

1 MS. ESKENAZI: -- vague and ambiguous. 16:19:12

2 MR. PETROCELLI: Fair enough. 16:19:12

3 Q. Before September 2010, I want to know 16:19:13

4 whether that was always your understanding of online 16:19:19

5 computer games. 16:19:23

6 A. Yes. 16:19:24

7 Q. Okay. Now, how did you gain that 16:19:27

8 understanding? 16:19:28

9 A. I don't know. 16:19:29

10 Q. Who told it to you? 16:19:30

11 A. I don't know. 16:19:32

12 Q. Did you read about it? 16:19:33

13 A. I don't know. 16:19:34

14 Q. When you first -- well, you had to learn it 16:19:35

15 somehow, right? You didn't come up with it on your 16:19:40

16 own, did you? 16:19:42

17 A. I don't recall how I learned of it. 16:19:43

18 Q. Okay. It's a very specific interpretation 16:19:47

19 of the word "online computer game." Can you -- did 16:19:52

20 you -- were you taught that by somebody like 16:19:56

21 Cathleen Blackburn, for example? 16:19:58

22 MS. ESKENAZI: Objection. 16:19:59

23 BY MR. PETROCELLI: 16:19:59

24 Q. Did she tell you that's what that word 16:20:00

25 meant? 16:20:03

1 MS. ESKENAZI: Objection. Move to strike. 16:20:03

2 THE WITNESS: No. 16:20:04

3 BY MR. PETROCELLI: 16:20:04

4 Q. Do you know when she happened to 16:20:09

5 coincidentally come up with the same interpretation 16:20:10

6 of the same words? 16:20:14

7 MS. ESKENAZI: Objection. Misstates the 16:20:14

8 testimony. Misleading. 16:20:15

9 THE WITNESS: I'm not aware of any language 16:20:20

10 that she's used. 16:20:22

11 BY MR. PETROCELLI: 16:20:22

12 Q. Have you and she to this day ever shared 16:20:23

13 with each other that you both happen to have the 16:20:27

14 exact same definition of "online computer games"? 16:20:30

15 MS. ESKENAZI: Objection. Misleading. 16:20:33

16 Misstates the testimony. Instruct not to answer. 16:20:34

17 Attorney-client privileged communication. Attorney 16:20:38

18 work product. 16:20:42

19 BY MR. PETROCELLI: 16:20:42

20 Q. Have you had a conversation with 16:20:43

21 Ms. Blackburn about your mutual agreement on the 16:20:44

22 meaning of those words, "online computer games"? 16:20:50

23 MS. ESKENAZI: Objection. Misstates the 16:20:52

24 testimony. Assumes facts not in evidence. 16:20:54

25 Attorney-client privileged communication. Instruct 16:20:59

1 not to answer. And argumentative. 16:21:01

2 BY MR. PETROCELLI: 16:21:01

3 Q. Well, who is the client? You heard the 16:21:07

4 instruction. You're going listen to it? 16:21:09

5 A. I am. 16:21:11

6 Q. Who is the client? 16:21:12

7 MS. ESKENAZI: It was my instruction. 16:21:13

8 MR. PETROCELLI: Yeah. 16:21:14

9 Q. Who is the client? She said that every 16:21:15

10 such conversation you've had, apparently every 16:21:18

11 conversation you've had on the subject of online 16:21:22

12 computer games is a privileged conversation, just 16:21:24

13 like every time you speak to the Tolkiens, it's 16:21:27

14 apparently privileged. 16:21:30

15 Is that accurate? Every time you've ever 16:21:32

16 had a conversation with anybody about online 16:21:35

17 computer games, it's privileged? 16:21:37

18 MS. ESKENAZI: Objection. It misstates the 16:21:42

19 testimony. Do you want to ask a question? 16:21:43

20 MR. PETROCELLI: I just did. 16:21:44

21 Q. Is that true? 16:21:46

22 A. I have no expertise in the U.S. laws of 16:21:46

23 privilege. 16:21:49

24 Q. What does that have to do with my question? 16:21:50

25 Did I ask you that? 16:21:52

1 MS. ESKENAZI: Yes. 16:21:53

2 THE WITNESS: Yes. 16:21:54

3 BY MR. PETROCELLI: 16:21:54

4 Q. No, I asked you do you -- okay, let me 16:21:54

5 reframe it, then, if you -- if you interpreted that 16:21:57

6 I was quizzing you on U.S. law of privilege. 16:21:59

7 Do you know when you're having a privileged 16:22:04

8 conversation or not in -- in -- when you're talking 16:22:06

9 to a person? 16:22:09

10 MS. ESKENAZI: Objection. Vague and 16:22:10

11 ambiguous. 16:22:13

12 THE WITNESS: I don't know under which 16:22:13

13 legal system you're referring. 16:22:15

14 BY MR. PETROCELLI: 16:22:15

15 Q. What legal system are you familiar with? 16:22:17

16 A. The English legal system. 16:22:20

17 Q. Okay. Well, let's stick with that one, 16:22:21

18 then. 16:22:21

19 You apparently understood that every time 16:22:24

20 you opened your mouth and spoke to the Tolkiens, as 16:22:25

21 a director, that you were actually acting as a 16:22:30

22 lawyer and that every one of those statements were 16:22:34

23 privileged. 16:22:36

24 Do you recall we went through that? 16:22:36

25 MS. ESKENAZI: Objection. Misstates the 16:22:38

1 testimony. It's misleading. Move to strike as 16:22:39

2 argumentative. 16:22:42

3 BY MR. PETROCELLI: 16:22:42

4 Q. Do you recall that? 16:22:47

5 A. What I said was that I only spoke to the 16:22:47

6 Tolkiens in my capacity as a solicitor. I didn't 16:22:51

7 reference privilege. 16:22:54

8 Q. Well, when you speak in your capacity as 16:22:55

9 a -- as a solicitor, do you understand those are 16:22:57

10 conversations that are held in confidence by the 16:23:01

11 lawyer-client privilege? 16:23:05

12 A. In the U.K., yes. I can't speak to the 16:23:09

13 U.S. law. 16:23:11

14 Q. Well, let's just stick with the U.K. law, 16:23:12

15 then, okay? 16:23:14

16 A. Okay. 16:23:14

17 Q. You have an attorney-client privilege in 16:23:15

18 the U.K., right? 16:23:17

19 A. Right. 16:23:20

20 Q. And when you have confidential 16:23:21

21 communications with your client about the giving of 16:23:24

22 legal advice, those are considered privileged? 16:23:25

23 MS. ESKENAZI: Objection. Calls for a 16:23:28

24 legal conclusion. 16:23:31

25 THE WITNESS: Yes. 16:23:31

1 BY MR. PETROCELLI: 16:23:31

2 Q. Okay. Now, let's -- you can work with that 16:23:32

3 definition, then. That's apparently your 16:23:36

4 understanding of what it means to be privileged in 16:23:38

5 the U.K. 16:23:40

6 I want to go back now to your conversations 16:23:40

7 with Cathleen Blackburn. 16:23:42

8 You would agree with me that not every 16:23:44

9 single one of your conversations with Cathleen 16:23:48

10 Blackburn is a privileged conversation, correct? 16:23:51

11 Let's start there. 16:23:53

12 A. I'm relying on the advice of counsel as to 16:23:54

13 what is privileged for these purposes. 16:23:57

14 Q. Can you answer my question? 16:23:59

15 A. I can't, other than that. 16:24:00

16 Q. That doesn't call for a privileged -- 16:24:02

17 A. It calls for a definition of privilege. 16:24:06

18 Q. No, no, it does not, sir. 16:24:07

19 MS. ESKENAZI: It does. 16:24:11

20 MR. PETROCELLI: No, it does not. 16:24:11

21 MS. ESKENAZI: Okay. 16:24:12

22 BY MR. PETROCELLI: 16:24:12

23 Q. I'm applying your understanding and your 16:24:13

24 state of mind when you are having conversations. 16:24:15

25 I'm not asking for Bonnie Eskenazi's or an American 16:24:18

1 judge's view of privilege. I'm asking for you, when 16:24:22
2 you're having conversations with your law partner, 16:24:26
3 fair to say that you understand that not every one 16:24:30
4 of those conversations is in your capacity as a 16:24:33
5 solicitor that would be protected by the U.K. laws 16:24:36
6 of privilege -- 16:24:38

7 MS. ESKENAZI: Objection. 16:24:39

8 BY MR. PETROCELLI: 16:24:39

9 Q. -- correct? 16:24:39

10 MS. ESKENAZI: Objection. Vague and 16:24:40
11 ambiguous. Calls for a legal conclusion. 16:24:42

12 THE WITNESS: Anything of a personal nature 16:24:44
13 would not be privileged. 16:24:46

14 BY MR. PETROCELLI: 16:24:46

15 Q. Well, what about the two of you are sitting 16:24:47
16 around talking about how -- how -- how -- what the 16:24:48
17 financial prospects are of your law business? 16:24:52
18 That's not a privilege to a particular client 16:24:56
19 either, correct? 16:24:58

20 A. That's probably right. 16:25:01

21 Q. Okay. So have you ever had a conversation 16:25:01
22 with Cathleen Blackburn on the subject of online 16:25:08
23 computer games? Yes or no? 16:25:11

24 MS. ESKENAZI: Objection. Are you -- to 16:25:13
25 the extent that those conversations took place in 16:25:15

1 the context of this case with respect to the Tolkien 16:25:18

2 Estate, it is privileged and -- 16:25:21

3 MR. PETROCELLI: I don't -- 16:25:21

4 MS. ESKENAZI: -- I'm going to instruct not 16:25:23

5 to answer. 16:25:24

6 MR. PETROCELLI: I don't think that's 16:25:25

7 privileged, the fact -- he can answer "yes," "no," 16:25:26

8 as to whether he had that -- any -- any such 16:25:28

9 conversation. And we can get into -- deeper into 16:25:31

10 the topic. 16:25:35

11 THE WITNESS: Only in the context of this 16:25:36

12 litigation. 16:25:37

13 BY MR. PETROCELLI: 16:25:37

14 Q. That's what your lawyer just said. 16:25:38

15 A. That's what I just said. 16:25:40

16 Q. So this litigation started in November 2011 16:25:41

17 or '12. What is it? '12. 2012. 16:25:47

18 Prior to November 2012, did you ever have a 16:25:50

19 discussion with Cathleen Blackburn about what 16:25:54

20 "online computer games" means? 16:25:58

21 MS. ESKENAZI: To the extent that you've 16:26:01

22 had conversations with Ms. Blackburn in the context 16:26:03

23 of this dispute with Warner and Zaentz on behalf of 16:26:06

24 the Tolkiens, I'm going to instruct you not to 16:26:13

25 answer. Those conversations are privileged. 16:26:15

1 BY MR. PETROCELLI: 16:26:15

2 Q. So you can answer that, then. 16:26:18

3 A. I can't answer. 16:26:19

4 Q. I asked -- I asked -- it's a "yes" or "no" 16:26:22

5 question. Prior to November '12, yes or no? 16:26:25

6 A. I'm accepting the advice of my counsel. 16:26:32

7 MR. PETROCELLI: Are you instructing him 16:26:34

8 not to answer that question? 16:26:34

9 MS. ESKENAZI: We're going to take a break. 16:26:41

10 We're going to talk about the privilege. 16:26:43

11 MR. PETROCELLI: Okay. 16:26:44

12 THE VIDEOGRAPHER: Off the record at 4:26 16:26:46

13 p.m. 16:26:47

14 (Brief recess.) 16:29:06

15 THE VIDEOGRAPHER: We are back on the 16:29:06

16 record at 4:29 p.m. 16:29:18

17 BY MR. PETROCELLI: 16:29:18

18 Q. I think where we left off, just to rewind 16:29:21

19 this a bit, was your conversations with Cathleen 16:29:23

20 Blackburn on the subject of online computer games, 16:29:28

21 whether you've had any conversations with her on 16:29:34

22 that subject prior to this lawsuit in November 2012. 16:29:36

23 MS. ESKENAZI: And I'm going to allow the 16:29:42

24 witness to answer that question "yes" or "no," but I 16:29:44

25 do believe we are skirting privilege, given his 16:29:47

1 prior testimony. 16:29:49

2 BY MR. PETROCELLI: 16:29:49

3 Q. Okay. 16:29:51

4 A. Yes. 16:29:51

5 Q. Okay. And when is the first time you had 16:29:52

6 such a conversation? 16:29:54

7 MS. ESKENAZI: You can answer when. 16:29:57

8 THE WITNESS: At some time after 16:29:58

9 September or October 2010. 16:30:02

10 BY MR. PETROCELLI: 16:30:02

11 Q. Okay. And how many times have you had a 16:30:05

12 conversation with her between September or 16:30:09

13 October 2010 and the filing of this lawsuit in 16:30:12

14 November 2012? 16:30:15

15 A. I don't recall. 16:30:16

16 Q. Approximately? 16:30:18

17 A. I don't recall. 16:30:20

18 Q. More than ten? 16:30:22

19 A. I don't know. 16:30:24

20 Q. More than one? 16:30:24

21 A. Probably. 16:30:25

22 Q. More than five? 16:30:27

23 A. Probably. 16:30:29

24 Q. More than ten? 16:30:29

25 A. I don't know. 16:30:31

1 Q. Between five and ten? 16:30:31

2 A. I don't know. 16:30:33

3 Q. Have you ever made a memo or note of any of 16:30:34

4 those discussions or written an e-mail about it? 16:30:39

5 A. I don't believe so. 16:30:42

6 Q. Do you know if she has? 16:30:47

7 MS. ESKENAZI: Objection. Calls for 16:30:49

8 speculation. Lacks foundation. 16:30:50

9 THE WITNESS: I don't know. 16:30:52

10 BY MR. PETROCELLI: 16:30:52

11 Q. Have you ever seen such a memo or document 16:30:54

12 or e-mail from her on that subject? 16:30:57

13 MS. ESKENAZI: I'll allow you to answer 16:30:59

14 that "yes" or "no" but I do believe it's skirting 16:31:02

15 attorney-client privileged communications. 16:31:04

16 THE WITNESS: No. 16:31:06

17 BY MR. PETROCELLI: 16:31:06

18 Q. Every -- is every -- every time you've had 16:31:13

19 such a conversation with her was in connection with 16:31:16

20 the Tolkien matters? 16:31:18

21 MS. ESKENAZI: You can answer that "yes" 16:31:20

22 or "no." 16:31:22

23 THE WITNESS: Yes. 16:31:22

24 BY MR. PETROCELLI: 16:31:22

25 Q. And every time you had such a conversation 16:31:24

1 with -- with Ms. Blackburn on the subject of online 16:31:26

2 video games, you and she both charged for your time, 16:31:30

3 charged -- 16:31:36

4 MS. ESKENAZI: Objection. 16:31:36

5 BY MR. PETROCELLI: 16:31:36

6 Q. -- the client? 16:31:37

7 MS. ESKENAZI: Objection. Relevance. 16:31:37

8 Vague and ambiguous. 16:31:39

9 THE WITNESS: Well, I can't be precise that 16:31:43

10 that conversation was recorded there and then, but 16:31:45

11 in principle, yes. 16:31:47

12 BY MR. PETROCELLI: 16:31:47

13 Q. Prior to September 2010, did you ever have 16:31:50

14 a conversation with anybody on the subject of online 16:31:56

15 video games? 16:31:59

16 MS. ESKENAZI: Objection. Vague and 16:32:01

17 ambiguous. 16:32:01

18 BY MR. PETROCELLI: 16:32:01

19 Q. Or online computer games? 16:32:03

20 A. Not that I recall. 16:32:05

21 Q. Okay. So prior to September 2010, you 16:32:10

22 never spoke to Cathleen Blackburn about your view 16:32:14

23 that an online computer game involved the purchase 16:32:18

24 of a disc or cartridge or device that gets inserted 16:32:21

25 into the computer? 16:32:25

1 A. I don't believe so. 16:32:26

2 Q. And you -- and prior to that time did you 16:32:27

3 ever have a written communication? Prior to 16:32:30

4 September 2010 did you ever have a written 16:32:33

5 communication with Ms. Blackburn on that subject? 16:32:36

6 A. I don't believe so. 16:32:39

7 Q. And prior to September 2010, had you ever 16:32:41

8 communicated orally or in writing with anybody on 16:32:45

9 the subject of -- of online computer games involves 16:32:49

10 the purchase of some disc or cartridge or other 16:32:55

11 physical device? 16:32:59

12 MS. ESKENAZI: Objection to the extent it 16:33:00

13 calls for attorney-client privileged communication. 16:33:01

14 But you can answer. 16:33:04

15 THE WITNESS: I don't believe so. 16:33:05

16 BY MR. PETROCELLI: 16:33:05

17 Q. But you do believe that you had that view 16:33:11

18 prior to September 2010, correct? 16:33:13

19 A. Yes. 16:33:13

20 Q. Okay. And is it your testimony that prior 16:33:28

21 to September 2010 you had no knowledge whatsoever 16:33:31

22 that an online computer game could be obtained, 16:33:40

23 accessed and/or played without purchasing a disc or 16:33:47

24 cartridge or other similar device? 16:33:52

25 MS. ESKENAZI: Objection. Vague and 16:33:57

1	ambiguous. Compound.	16:33:59
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2 THE WITNESS: I had no knowledge that such 16:34:01

3	a game could be purchased or delivered without	16:34:03
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4 buying physical media. 16:34:05

5 BY MR. PETROCELLI: 16:34:05

6 Q. And by "physical media," you mean a disc or 16:34:07

7	a cartridge on which the contents of the game	16:34:10
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8	appear?	16:34:13
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9 | A. Yes. 16:34:14

10	Q. Okay. And you never looked into that	16:34:18
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11      question at all?                                     16:34:22
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12 MS. ESKENAZI: Objection. Vague and 16:34:24

13	ambiguous. Asked and answered.	16:34:26
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14 THE WITNESS: Not until September, 16:34:27

15	October 2010.	16:34:29
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16 BY MR. PETROCELLI: 16:34:29

17 Q. And I'm focused on prior to September -- 16:34:30

18	A. Okay.	16:34:30
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19 Q. -- 2010, okay? 16:34:33

20 You never looked into that? 16:34:34

21	A. No.	16:34:35
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22	Q. So at the time when you formed this view	16:34:36
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23 that it required a purchase of a device on which the 16:34:38

24 contents of the game were -- were contained, did you 16:34:43

25 do any research at all on -- in coming to that view? 16:34:49

1 MS. ESKENAZI: Objection. Vague and 16:34:54
2 ambiguous. 16:34:56

3 THE WITNESS: Well, as I said before, I 16:34:56
4 can't remember how I came to that view. 16:34:58

5 BY MR. PETROCELLI: 16:34:58

6 Q. And so far as your testimony is concerned, 16:35:00
7 then, prior to 2010, you had that view but never 16:35:04
8 shared it with anyone, correct? 16:35:09

9 MS. ESKENAZI: Objection. Vague and 16:35:11
10 ambiguous. Asked and answered. 16:35:13

11 THE WITNESS: I can't recall if I ever 16:35:14
12 shared that view with anyone. 16:35:15

13 BY MR. PETROCELLI: 16:35:15

14 Q. You can't identify anybody you ever shared 16:35:17
15 it with, correct? 16:35:18

16 A. That's correct. 16:35:21

17 Q. Did you say the Davis Wright & Tremaine 16:35:21
18 firm was involved in a case or matters involving 16:35:58
19 infringing copies of Tolkien books on -- that 16:36:15
20 appeared on Web sites? 16:36:17

21 MS. ESKENAZI: Objection. Misstates the 16:36:19
22 testimony. 16:36:20

23 BY MR. PETROCELLI: 16:36:20

24 Q. Did you say something to that effect? 16:36:22

25 A. Something to that effect. 16:36:24

1 Q. Okay. What time period was that, do you 16:36:25
2 know? 16:36:27

3 A. I would guess around 2008, 2009. 16:36:27

4 Q. Did you also say that involved file 16:36:53
5 sharing? 16:36:56

6 MS. ESKENAZI: Objection. Misstates the 16:36:57
7 testimony. 16:36:58

8 THE WITNESS: If that's the correct 16:37:00
9 expression. 16:37:01

10 BY MR. PETROCELLI: 16:37:01

11 Q. I wrote those words down. Do you know what 16:37:02
12 "file sharing" means? 16:37:04

13 A. Well, what the case involved was a Web site 16:37:05
14 where members of the public post items and then 16:37:10
15 other members of the public can retrieve them. 16:37:14

16 Q. What do you mean by "retrieve them"? 16:37:17
17 Download them? 16:37:18

18 MS. ESKENAZI: Objection. 16:37:20

19 THE WITNESS: Download them. 16:37:20

20 BY MR. PETROCELLI: 16:37:20

21 Q. Okay. And were you aware, prior to 2010, 16:37:23
22 whether books could be downloaded from a Web -- Web 16:37:28
23 site without going in and having to buy some 16:37:34
24 physical device, like in the case of games? 16:37:36

25 A. Well, I can't recall when authorized books 16:37:43

1 became available online, but the kind of sites that 16:37:46
2 I described, people would post a PDF file, so it's 16:37:49
3 not really a book, it was an infringing copy of a 16:37:52
4 book. 16:37:55

5 Q. Well, putting aside infringing, 16:37:55
6 non-infringing, when did you become generally aware 16:37:57
7 that people could obtain or access books without 16:37:59
8 going into a bookstore to buy the book but by going 16:38:03
9 online and downloading it onto a computer? 16:38:06

10 MS. ESKENAZI: Objection. Misstates the 16:38:09
11 testimony. Vague and ambiguous. 16:38:10

12 THE WITNESS: I don't recall when I became 16:38:12
13 aware of that. 16:38:14

14 BY MR. PETROCELLI: 16:38:14

15 Q. Was it before September 2010? 16:38:15

16 A. Yes. 16:38:16

17 Q. You would have known it as of the time of 16:38:20
18 this lawsuit handled by Davis Wright & Tremaine? 16:38:22

19 A. Well, I wouldn't characterize what the 16:38:29
20 infringer was doing as books. They were photocopies 16:38:31
21 in PDF form. 16:38:35

22 Q. Fair enough. But I was just trying to use 16:38:37
23 that as a point of reference -- 16:38:39

24 A. Right. 16:38:40

25 Q. -- to establish timing of your knowledge. 16:38:41

1 So I'm trying to -- I'm trying to get your best 16:38:43

2 testimony, when you would have known about that 16:38:45

3 capability, downloading a book without having to go 16:38:49

4 and buy the book? 16:38:52

5 MS. ESKENAZI: Objection. It misstates the 16:38:53

6 testimony. Vague and ambiguous. Compound. 16:38:55

7 THE WITNESS: I'd have been aware of things 16:38:57

8 like Kindle for some time, but I can't remember from 16:38:59

9 when. 16:39:03

10 BY MR. PETROCELLI: 16:39:03

11 Q. Have you downloaded books, used Kindle or 16:39:04

12 one of the other services? 16:39:06

13 A. I have. 16:39:07

14 Q. Which ones have you used? 16:39:10

15 A. Kindle, and I've downloaded a book to my 16:39:11

16 iPad, which seems to be Apple's own system. 16:39:22

17 Q. Well, that's -- 16:39:22

18 A. I'm not exactly sure. 16:39:24

19 Q. iPad is relatively new, right, so -- 16:39:25

20 A. Right. 16:39:28

21 Q. You never used an iPad before the last 16:39:29

22 couple of months, as I understand; is that right? 16:39:31

23 A. Correct. 16:39:33

24 Q. Okay. But going back to Kindle, how long 16:39:34

25 have you had the Kindle? 16:39:36

1 "Experience," were those infringement actions? 16:40:58

2 A. When you say "infringement actions," the 16:41:04

3 vast majority of the work that I do doesn't involve 16:41:06

4 proceedings actually being issued. It's dispute 16:41:10

5 resolution. 16:41:13

6 Q. Okay. 16:41:13

7 A. So I'm just not sure how you're -- 16:41:14

8 Q. Fair enough. 16:41:14

9 A. -- using the terminology. 16:41:16

10 Q. Any -- any dispute related to computer 16:41:16

11 matters, computer products, the Internet, computer 16:41:21

12 technology? 16:41:25

13 MS. ESKENAZI: Objection. Compound. 16:41:26

14 BY MR. PETROCELLI: 16:41:26

15 Q. Online. Download. Those concepts, I'm 16:41:30

16 trying to understand what the depth of your 16:41:33

17 experience is -- 16:41:35

18 A. Right, right. 16:41:35

19 Q. -- as a lawyer. 16:41:36

20 MS. ESKENAZI: Objection. Vague and 16:41:37

21 ambiguous. Compound. 16:41:38

22 BY MR. PETROCELLI: 16:41:38

23 Q. Can you -- can you share that with us? 16:41:41

24 A. I will try to. 16:41:44

25 A number of cases involving electronic 16:41:47

1 books being sold on CD ROM on sites like eBay, and a 16:41:52
2 number of cases where people, either for commercial 16:42:00
3 profit or political motives, make the works of 16:42:06
4 Tolkien available free to download from Web sites. 16:42:10
5 Q. What kind of works? Books, you mean? 16:42:17
6 A. Yeah, The Lord of the Rings and The Hobbit. 16:42:19
7 And -- 16:42:19
8 Q. Did you ever -- 16:42:19
9 A. -- other works. 16:42:23
10 Q. Did you ever hear of people downloading 16:42:23
11 from the Web site any games for free, you know, 16:42:26
12 infringers, without authorization, creating Web 16:42:31
13 sites where people could download games? 16:42:34
14 A. I've never -- 16:42:39
15 MS. ESKENAZI: Objection. 16:42:41
16 THE WITNESS: -- come across that. 16:42:40
17 BY MR. PETROCELLI: 16:42:40
18 Q. On the books -- 16:42:40
19 MS. ESKENAZI: You guys need to wait. You 16:42:41
20 ask the question, I object, you answer. 16:42:43
21 Objection. Vague and ambiguous. Compound. 16:42:45
22 BY MR. PETROCELLI: 16:42:45
23 Q. On the books, how far back does that 16:42:47
24 knowledge go, the downloading of -- of Tolkien books 16:42:50
25 from the Web sites? 16:43:00

1 A. That was the case I described earlier. 16:43:01

2 Most of the cases have been sales of CDs with the 16:43:06

3 books on them. 16:43:09

4 Q. In the course of your work doing cases or 16:43:11

5 disputes related to either the Internet or any 16:43:22

6 computer-related matters, have you ever worked with 16:43:26

7 any computer experts or consultants or Internet 16:43:29

8 consultants or people who have expertise in those 16:43:35

9 areas? 16:43:37

10 MS. ESKENAZI: Objection. Vague and 16:43:37

11 ambiguous. Compound. 16:43:39

12 THE WITNESS: No. 16:43:40

13 BY MR. PETROCELLI: 16:43:40

14 Q. What about other lawyers, and Davis 16:43:43

15 Wright & Tremaine, would you work with an attorney 16:43:46

16 there? 16:43:47

17 A. Yes. 16:43:48

18 Q. Who was that? 16:43:49

19 A. I believe it was Lance Koonce. 16:43:52

20 Q. How do you spell his name? 16:43:54

21 A. K-o-o-n-c-e. 16:43:56

22 Q. When is the first time that you worked with 16:44:01

23 Greenberg Glusker? 16:44:05

24 A. I don't recall. I would guess it was 16:44:09

25 around 2003, 2004. 16:44:18

1 Q. Since that point in time, you've had 16:44:20
2 regular -- well, withdrawn. 16:44:24

3 When is the first time you worked with 16:44:26
4 Greenberg Glusker in connection with any matters 16:44:31
5 related to the Tolkien Estate or the Tolkiens? 16:44:33

6 A. It's when the Tolkien Estate changed its 16:44:35
7 U.S. attorneys from Loeb & Loeb to Greenberg 16:44:37
8 Glusker. I can't remember the exact date. Around 16:44:41
9 2007. 16:44:44

10 Q. And is -- before that switch of counsel, 16:44:47
11 you had had a relationship with the Greenberg firm 16:44:54
12 from 2003 to 2007? 16:44:57

13 A. No, we had worked on one case. 16:44:59

14 (Pages 292 through 293 are
15 marked confidential and are bound
16 under separate cover. The
17 nonconfidential portion of this
18 transcript continues on page 294.)
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1 Q. And what about anybody -- what about 16:47:08

2 Mr. Boose? How long had you worked with him? 16:47:10

3 MS. ESKENAZI: Objection. Assumes facts 16:47:12

4 not in evidence. Misstates the testimony. 16:47:13

5 THE WITNESS: I've only recently dealt with 16:47:17

6 Mr. Boose on a matter that is not Tolkien-related. 16:47:19

7 BY MR. PETROCELLI: 16:47:19

8 Q. What about Loeb? Who did you work with at 16:47:24

9 Loeb? 16:47:27

10 A. The principal lawyer was Barry Slotnick in 16:47:30

11 New York. 16:47:37

12 Q. Okay. The various lawyers that you've 16:47:37

13 identified, did you understand they were 16:47:41

14 knowledgeable in matters related to intellectual 16:47:42

15 property rights? 16:47:45

16 MS. ESKENAZI: Objection. Vague and 16:47:50

17 ambiguous. 16:47:51

18 THE WITNESS: Not in all cases. 16:47:52

19 BY MR. PETROCELLI: 16:47:52

20 Q. Which one? 16:47:56

21 A. Mr. Koonce I understood to be knowledgeable 16:47:56

22 in matters relating to intellectual property rights. 16:47:59

23 Q. Have you identified all the American 16:48:02

24 lawyers with whom you have dealt with on any matters 16:48:06

25 related to either intellectual property rights or 16:48:09

1 any computer-related issues? 16:48:12

2 A. I think there was one other case. 16:48:16

3 Q. What was that? 16:48:18

4 A. There was an infringer in Missouri selling 16:48:19

5 infringing CD ROMS with the Tolkien works uploaded 16:48:29

6 on them on eBay. He did not respond to 16:48:32

7 cease-and-desist letters, and we instructed a local 16:48:38

8 lawyer in Missouri to put pressure on him. 16:48:42

9 Q. And who was that attorney? 16:48:45

10 A. I recall that the attorney's name was Rick 16:48:47

11 Schnake. I don't recall the name of the firm. 16:48:51

12 Q. What year was that? 16:48:52

13 A. Four or five years ago. 16:48:56

14 Q. You -- you testified that the Estate wished 16:48:58

15 to be associated with books; the Estate did not wish 16:49:04

16 to be associated with any other activities, 16:49:11

17 including merchandising and film activities. 16:49:13

18 Do you recall that testimony? 16:49:15

19 A. I do. 16:49:15

20 Q. Okay. And you said that that was a matter 16:49:18

21 of public knowledge or public record. 16:49:20

22 Do you recall that? 16:49:22

23 A. I did say that. 16:49:22

24 Q. Yeah. First of all, how do you know it was 16:49:27

25 a matter of public knowledge or public record? 16:49:31

1 A. That's been my understanding from the time 16:49:33
2 that I started to do Tolkien work. I can't tell you 16:49:36
3 how I came by that knowledge. 16:49:39

4 Q. And what is it -- what do you mean when you 16:49:40
5 say that the Estate does not wish to be associated 16:49:49
6 with merchandising and film activities? What do you 16:49:53
7 mean by that? 16:49:59

8 MS. ESKENAZI: Objection. Vague and 16:50:00
9 ambiguous. 16:50:02

10 THE WITNESS: The Estate believes that the 16:50:02
11 works of J.R.R. Tolkien should be enjoyed as works 16:50:06
12 of literature and doesn't want to be involved with 16:50:08
13 any other forms of exploitation as its present 16:50:12
14 policy. 16:50:15

15 BY MR. PETROCELLI: 16:50:15

16 Q. Who is the Estate? Who -- who are those 16:50:16
17 people? 16:50:19

18 MS. ESKENAZI: Objection. Asked and 16:50:20
19 answered. Vague and ambiguous. 16:50:22

20 BY MR. PETROCELLI: 16:50:22

21 Q. Just give me their names. 16:50:24

22 A. The Tolkien Estate Limited and the Tolkien 16:50:26
23 Trust. 16:50:29

24 Q. But who are the people who have that view? 16:50:29

25 MS. ESKENAZI: Well, objection. 16:50:32

1 To the extent that you learned that 16:50:34

2 information in attorney-client communications -- 16:50:36

3 MR. PETROCELLI: You said it's a matter -- 16:50:36

4 MS. ESKENAZI: -- you need to carve that 16:50:39

5 out. To the extent you learned the information just 16:50:40

6 generally, you're -- Mr. Petrocelli's entitled to 16:50:44

7 it. 16:50:49

8 THE WITNESS: The question of which members 16:50:51

9 of the Estate held that view I think is going into 16:50:52

10 areas of privilege. 16:50:55

11 BY MR. PETROCELLI: 16:50:55

12 Q. How do you know anybody holds that view? 16:50:57

13 A. Well, I don't think I can discuss that 16:50:59

14 without revealing privileged information. 16:51:02

15 Q. You said it's a matter of public knowledge 16:51:04

16 or public record. 16:51:07

17 A. I did. 16:51:08

18 Q. Are you saying that in connection with 16:51:09

19 that, the public record has never identified a 16:51:13

20 single Tolkien person who has expressed that view or 16:51:15

21 to whom that view has been attributed? 16:51:18

22 MS. ESKENAZI: Objection. Vague and 16:51:20

23 ambiguous. Compound. 16:51:21

24 THE WITNESS: I don't know. My belief is 16:51:22

25 that they generally refer to the Tolkien Estate. 16:51:24

1 BY MR. PETROCELLI: 16:51:24

2 Q. You do know the answer to my question, 16:51:28

3 though, you are just declining to tell me, right? 16:51:30

4 A. I don't understand. 16:51:33

5 MS. ESKENAZI: Objection. Vague and 16:51:34

6 ambiguous. 16:51:34

7 BY MR. PETROCELLI: 16:51:34

8 Q. You do know which members of the Tolkien 16:51:35

9 companies and trusts have this view? 16:51:39

10 A. I do know which members have that view. 16:51:46

11 Q. Do you -- and do you know which -- whether 16:51:48

12 there are any members who don't share that view? 16:51:50

13 MS. ESKENAZI: Objection. It -- 16:51:53

14 BY MR. PETROCELLI: 16:51:53

15 Q. You can answer that "yes" or "no." 16:51:56

16 MS. ESKENAZI: -- invades the -- invades 16:51:58

17 the attorney-client privilege. 16:51:59

18 MR. PETROCELLI: Are you instructing him on 16:51:59

19 that? 16:52:01

20 MS. ESKENAZI: I am. 16:52:01

21 (Pages 299 through 306 are
22 marked confidential and are bound
23 under separate cover. The
24 nonconfidential portion of this
25 transcript continues on page 307.)

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1 Q. Right. And just to be clear, if -- 17:03:48

2 withdrawn. I'll move on. 17:03:59

3 Do you e-mail any of the Tolkiens? 17:04:16

4 A. No. 17:04:18

5 Q. Ever? 17:04:19

6 A. I once e-mailed Baillie Tolkien, who asked 17:04:19

7 me a question about cars. 17:04:29

8 MS. ESKENAZI: To the extent -- 17:04:33

9 THE WITNESS: Un- -- unrelated to client 17:04:33

10 work. 17:04:35

11 BY MR. PETROCELLI: 17:04:35

12 Q. I'm not interested in that. Only time 17:04:35

13 you've e-mailed was to Baillie on cars? 17:04:39

14 A. Yes. 17:04:41

15 Q. And no one else? 17:04:42

16 A. I don't believe so. 17:04:43

17 Q. Do you communicate with anybody at 17:04:44

18 HarperCollins regarding the Tolkien matters? 17:04:52

19 A. Yes. 17:04:55

20 Q. And who? Who do you communicate with and 17:04:57

21 who have you over the years? 17:05:00

22 MS. ESKENAZI: Objection. Vague and 17:05:02

23 ambiguous and compound. 17:05:04

24 THE WITNESS: Principally Simon 17:05:06

25 Dowson-Collins, who is the general counsel. 17:05:10

1 BY MR. PETROCELLI: 17:05:12

2 Q. And before him? 17:05:12

3 A. I don't recall there being anyone there 17:05:18

4 before him. 17:05:20

5 Q. Was there an Adrian Laing, was it? 17:05:21

6 "Laing"? That -- did you ever communicate with that 17:05:25

7 person? 17:05:28

8 A. No, I don't know him. 17:05:28

9 Q. Okay. Anybody else besides 17:05:29

10 Mr. Dowson-Collins? 17:05:33

11 A. Yes. 17:05:33

12 Q. Who? 17:05:34

13 A. There's a junior lawyer who works with him 17:05:36

14 whose name is Karly Last, L-a-s-t. 17:05:38

15 Q. First name? Karly? 17:05:41

16 A. Karly. 17:05:43

17 Q. A woman? 17:05:44

18 A. Yes. 17:05:45

19 Q. And do you e-mail either Ms. Last or 17:05:46

20 Mr. Dowson-Collins? 17:05:56

21 A. Yes. 17:05:57

22 Q. And you e-mailed them while you were at the 17:06:04

23 Manches firm as well? 17:06:06

24 A. I don't think Ms. Last was there at that 17:06:10

25 time. 17:06:12

1 Q. Dowson-Collins was, right? 17:06:12

2 A. Yes. 17:06:13

3 Q. Okay. And you receive e-mails from him or 17:06:14

4 her from time to time? 17:06:16

5 A. Yes. 17:06:17

6 Q. At Manches, as well as your current firm, 17:06:18

7 right? 17:06:23

8 A. Yes. 17:06:23

9 Q. And you -- you don't have any kind of 17:06:30

10 writing at all with HarperCollins that indicates 17:06:32

11 that you have a joint representation relationship 17:06:35

12 with them; is that right? 17:06:40

13 MS. ESKENAZI: Objection. Misstates the 17:06:42

14 evidence. 17:06:43

15 THE WITNESS: I would not be aware of that. 17:06:45

16 BY MR. PETROCELLI: 17:06:45

17 Q. You are not aware of that, right? 17:06:48

18 A. What I meant to say was that if there is 17:06:51

19 one, Cathleen Blackburn would have that information, 17:06:53

20 not me. 17:06:55

21 Q. But you don't know of any, correct? 17:06:56

22 A. I don't know of any written agreement. 17:07:00

23 Q. Okay. Have you ever in the course of your 17:07:10

24 work done any checking on computer games, video 17:07:12

25 games, Internet-related games, that were out in the 17:07:23

1 marketplace, so to speak, with respect to the 17:07:33

2 Tolkiens? 17:07:36

3 MS. ESKENAZI: Objection. Vague and 17:07:38

4 ambiguous. Compound. 17:07:40

5 THE WITNESS: I don't recall ever having 17:07:42

6 dealt with a matter concerning games until 17:07:44

7 September, October 2010. 17:07:47

8 BY MR. PETROCELLI: 17:07:47

9 Q. My question is broader. I meant at any 17:07:49

10 point in time did you ever check or ask somebody 17:07:51

11 else to check what kind of uses with respect to 17:07:55

12 games are being made, whether they're online games, 17:07:58

13 video games, Internet games, anything like that that 17:08:04

14 you've done over the years prior to this dispute 17:08:08

15 in -- prior to September 2010? 17:08:11

16 A. No. 17:08:13

17 Q. Do you gamble, by the way? 17:08:13

18 A. In a limited way. 17:08:18

19 Q. What does that mean? 17:08:19

20 A. I occasionally play online poker. I 17:08:21

21 occasionally put a bet on a horse. 17:08:25

22 Q. How long have you been betting? 17:08:27

23 A. I don't recall. 17:08:29

24 Q. Well, you -- you were gambling before 17:08:34

25 September 2010, right? 17:08:37

1 A. Yes. 17:08:37

2 MS. ESKENAZI: Object- -- 17:08:37

3 BY MR. PETROCELLI: 17:08:37

4 Q. Okay. 17:08:41

5 MS. ESKENAZI: Objection to this line of 17:08:41

6 questioning as -- as irrelevant. 17:08:42

7 BY MR. PETROCELLI: 17:08:42

8 Q. When did you first begin gambling? 17:08:46

9 MS. ESKENAZI: Objection. Relevance. 17:08:50

10 THE WITNESS: I don't recall. 17:08:53

11 BY MR. PETROCELLI: 17:08:53

12 Q. Have you been gambling since 2000 -- the 17:08:56

13 year 2000? 17:09:01

14 MS. ESKENAZI: Objection. Relevance. 17:09:02

15 THE WITNESS: Well, I'm not sure that "been 17:09:04

16 gambling" is a fair characterization. I 17:09:06

17 occasionally have a bet, and more recently I've 17:09:08

18 occasionally played online poker. I don't want to 17:09:11

19 sound as though I'm a regular gambler. 17:09:14

20 BY MR. PETROCELLI: 17:09:14

21 Q. I wasn't trying to characterize it. 17:09:19

22 A. Thank you. 17:09:20

23 Q. I'm just trying to date it. 17:09:21

24 A. Okay. 17:09:23

25 Q. So how far can we go back with -- with 17:09:27

1 this? 17:09:29

2 A. I can't recall when I first placed a bet on 17:09:30

3 a horse. 17:09:35

4 Q. When did you first -- 17:09:37

5 A. If that's the question. 17:09:39

6 Q. -- play online gambling? 17:09:40

7 A. You mean online poker? 17:09:42

8 Q. Well, isn't that gambling? 17:09:45

9 A. Yeah. 17:09:47

10 Q. Okay. Yeah. Online poker, then. 17:09:48

11 MS. ESKENAZI: Objection. Relevance. 17:09:50

12 THE WITNESS: Perhaps two, three years ago. 17:09:59

13 BY MR. PETROCELLI: 17:09:59

14 Q. Have you ever been in a casino? 17:10:01

15 A. Yes. 17:10:03

16 MS. ESKENAZI: Objection. Relevance. 17:10:04

17 BY MR. PETROCELLI: 17:10:04

18 Q. When is the first time you've been into -- 17:10:05

19 in a casino? 17:10:07

20 MS. ESKENAZI: Objection. Relevance. 17:10:08

21 THE WITNESS: I've been in a casino once 17:10:09

22 about 20 years ago. 17:10:13

23 BY MR. PETROCELLI: 17:10:13

24 Q. Only time? 17:10:16

25 MS. ESKENAZI: Objection. Relevance. 17:10:18

1 THE WITNESS: As far as I can recall. 17:10:20

2 BY MR. PETROCELLI: 17:10:20

3 Q. Have you ever played a slot machine? 17:10:26

4 MS. ESKENAZI: Objection. Relevance. 17:10:28

5 THE WITNESS: I've played slot machines in 17:10:30

6 penny arcades at the Seaside. 17:10:33

7 BY MR. PETROCELLI: 17:10:33

8 Q. Are those -- where are those located, in 17:10:37

9 the U.K.? 17:10:44

10 A. Yes. 17:10:45

11 MS. ESKENAZI: Objection. Relevance. 17:10:45

12 BY MR. PETROCELLI: 17:10:45

13 Q. And can you wager on them? 17:10:46

14 MS. ESKENAZI: Same objection. 17:10:47

15 THE WITNESS: Well, this is when I was a 17:10:48

16 kid. You would put a two shilling or 10p coin in it 17:10:51

17 and pull a handle. 17:10:56

18 BY MR. PETROCELLI: 17:10:57

19 Q. Have you done that consistently over the 17:10:57

20 years? 17:11:00

21 A. No. 17:11:00

22 Q. Just as a child? 17:11:01

23 MS. ESKENAZI: Objection. Relevance. 17:11:03

24 THE WITNESS: Yes. 17:11:04

25 BY MR. PETROCELLI: 17:11:04

1 Q. You've never played a slot machine as an 17:11:08
2 adult? 17:11:10

3 MS. ESKENAZI: Objection. Relevance. 17:11:11

4 THE WITNESS: I may have. 17:11:13

5 BY MR. PETROCELLI: 17:11:13

6 Q. Do you know if Ms. Blackburn gambles? 17:11:18

7 MS. ESKENAZI: Objection. Rel- -- 17:11:18

8 MR. PETROCELLI: Don't tell me that's 17:11:22
9 privileged. 17:11:23

10 MS. ESKENAZI: Objection. Relevance. And 17:11:23
11 calls for speculation. Lacks foundation. 17:11:26

12 BY MR. PETROCELLI: 17:11:26

13 Q. You can answer. 17:11:31

14 A. I know that Ms. Blackburn placed a bet on 17:11:32
15 the Grand National horse race for herself and for 17:11:35
16 her mother last year. Beyond that, I have no 17:11:38
17 knowledge of any gambling on the part of 17:11:41
18 Ms. Blackburn. 17:11:44

19 Q. Okay. Let's look at a couple of documents. 17:11:57
20 Take a look at Exhibit 36, please. It's a document 17:12:03
21 dated July 23, 2004. 17:12:19

22 (The document referred to was 17:12:05
23 marked for identification as 17:12:05
24 Exhibit 36 and attached to this 17:12:05
25 deposition.) 17:12:18

1 BY MR. PETROCELLI: 17:12:18

2 Q. Have you ever seen this document before? 17:12:36

3 It's a letter to the director of licensing at 17:12:41

4 Tolkien Enterprises in Berkeley, California 17:12:47

5 regarding a massive multiplayer online role-playing 17:12:51

6 game called The Two Towers based on the works of 17:12:55

7 J.R.R. Tolkien. 17:12:58

8 A. I have no recollection of ever having seen 17:14:01

9 this document. 17:14:03

10 Q. When you started playing online poker, was 17:14:05

11 that before or after you discovered the online 17:14:13

12 Tolkien gambling game? 17:14:17

13 MS. ESKENAZI: Objection. Relevance. 17:14:19

14 THE WITNESS: I don't recall. 17:14:23

15 BY MR. PETROCELLI: 17:14:23

16 Q. When you played online poker, you didn't go 17:14:26

17 into a store to purchase a disc or cartridge, right? 17:14:28

18 MS. ESKENAZI: Objection. Relevance. 17:14:33

19 THE WITNESS: That's correct. 17:14:35

20 BY MR. PETROCELLI: 17:14:35

21 Q. What computer did you use to -- when you 17:14:37

22 were gambling online? 17:14:39

23 A. My home computer. 17:14:41

24 Q. And what did you do, you just typed in the 17:14:42

25 name of an online poker site? 17:14:46

1 A. You go to their Web site. 17:14:48

2 Q. Whose Web site? 17:14:51

3 MS. ESKENAZI: Objection. Relevance. 17:14:51

4 THE WITNESS: I think it's PokerStars. I'm 17:14:53

5 not sure. 17:15:02

6 BY MR. PETROCELLI: 17:15:02

7 Q. When -- you say you're the one that got 17:15:07

8 this e-mail spam that led to the discovery of this 17:15:10

9 online slot machine game? 17:15:13

10 A. Yes. 17:15:16

11 Q. Okay. Now, you got that e-mail spam 17:15:18

12 because you had already been playing online poker, 17:15:19

13 right? 17:15:19

14 MS. ESKENAZI: Objection. Assumes facts 17:15:22

15 not in evidence. 17:15:25

16 THE WITNESS: That would not be the case. 17:15:26

17 BY MR. PETROCELLI: 17:15:26

18 Q. Okay. But you had been playing online 17:15:28

19 poker as of the time that you encountered the online 17:15:29

20 slot machine game, right? 17:15:35

21 A. The -- 17:15:35

22 MS. ESKENAZI: Objection. Misstates the 17:15:37

23 testimony. Misleading. Assumes facts not in 17:15:38

24 evidence. 17:15:41

25 THE WITNESS: The spam e-mail was received 17:15:42

1 at my Manches work e-mail address. 17:15:44

2 BY MR. PETROCELLI: 17:15:44

3 Q. That doesn't answer my question. 17:15:49

4 A. Which was not the one used for online 17:15:50

5 poker. 17:15:54

6 Q. I understand that. But my question was 17:15:54

7 which came first, basically? 17:15:57

8 MS. ESKENAZI: Objection. Asked and 17:15:59

9 answered. 17:15:59

10 THE WITNESS: I don't recall. 17:16:00

11 BY MR. PETROCELLI: 17:16:00

12 Q. Do you have an account with that poker 17:16:02

13 company? 17:16:06

14 MS. ESKENAZI: Objection. Relevance. 17:16:06

15 THE WITNESS: I do. 17:16:08

16 BY MR. PETROCELLI: 17:16:08

17 Q. So there would be documents that would 17:16:10

18 establish when you opened up the account, right? 17:16:12

19 MS. ESKENAZI: Objection. Relevance. 17:16:16

20 Assumes facts not in evidence. 17:16:17

21 THE WITNESS: I don't know what documents 17:16:19

22 there would be. 17:16:20

23 BY MR. PETROCELLI: 17:16:20

24 Q. Credit card entries, things like that? You 17:16:23

25 have to use a credit card, right? 17:16:25

1 MS. ESKENAZI: Objection. Relevance. 17:16:27

2 THE WITNESS: I think that's right. 17:16:29

3 BY MR. PETROCELLI: 17:16:29

4 Q. Do -- did you ever try the -- the -- the 17:16:33

5 Tolkien online slot machine game? 17:16:38

6 A. No. 17:16:42

7 Q. Do you know if Ms. Blackburn did? 17:16:44

8 MS. ESKENAZI: Objection -- 17:16:47

9 THE WITNESS: I don't believe -- 17:16:48

10 MS. ESKENAZI: -- calls for speculation. 17:16:50

11 Lacks foundation. 17:16:50

12 THE WITNESS: I don't believe she did. 17:16:52

13 BY MR. PETROCELLI: 17:16:52

14 Q. Okay. Take a look at the next exhibit, 17:16:55

15 which is what? 17:16:58

16 MS. ESKENAZI: 37. 17:16:58

17 (The document referred to was 17:16:58

18 marked for identification as 17:16:58

19 Exhibit 37 and attached to this 17:16:58

20 deposition.) 17:17:02

21 MR. PETROCELLI: July 23, '04 is Exhibit 17:17:02

22 36, right? 17:17:05

23 MS. ESKENAZI: Yep. 17:17:05

24 Thank you. 17:17:05

25 BY MR. PETROCELLI: 17:17:05

1 Q. I've placed in front of you an e-mail from 17:17:14
2 Tom Magnani to yourself at the Manches e-mail 17:17:18
3 address, with a copy to Carole Barrett and Annette 17:17:24
4 Hurst and Fredrica Drotos dated Wednesday, August 4, 17:17:28
5 2004 regarding Two Towers online -- online game 17:17:38
6 letter. 17:17:41

7 You don't have any reason to believe you 17:17:47
8 didn't get this e-mail, correct? 17:17:49

9 A. I don't recognize it, but it has my name at 17:17:55
10 the top and my e-mail address, so that would be 17:17:57
11 right. 17:18:00

12 Q. And you -- did you copy this e-mail and put 17:18:02
13 it in a file? 17:18:07

14 A. I have no recollection of this e-mail. 17:18:08

15 Q. Do you have any reason to believe that if 17:18:11
16 you received this, you did not cop- -- you did not 17:18:14
17 copy it and put it in a file or print it and put it 17:18:16
18 in a file? 17:18:20

19 A. I have no reason to think that. 17:18:21

20 Q. What file would you have put it in? 17:18:22

21 MS. ESKENAZI: Objection. Calls for 17:18:32
22 speculation. Lacks foundation. Assumes facts not 17:18:34
23 in evidence. 17:18:35

24 THE WITNESS: I can't recall exactly what 17:18:35
25 filing system we had in 2004. 17:18:41

1 BY MR. PETROCELLI: 17:18:41

2 Q. Okay. When -- when you received this 17:18:43

3 e-mail, Exhibit 37 -- let me just read the first 17:18:47

4 couple of sentences: 17:18:52

5 "Dear Steven" -- that's 17:18:53

6 you -- "I've attached to this 17:18:55

7 e-mail a copy of a letter that Al 17:18:57

8 Bendich at SZC received recently." 17:18:58

9 SZC is Zaentz, correct? 17:19:04

10 A. I imagine that's what it's referring to, 17:19:07

11 yes. 17:19:07

12 Q. Continuing: 17:19:09

13 "As you will see, the letter 17:19:09

14 concerns a largely text-based 17:19:11

15 massively multiplayer online 17:19:13

16 role-playing game titled 'The Two 17:19:16

17 Towers.' The game, which we are 17:19:19

18 told has been around for ten 17:19:21

19 years, has not been licensed by 17:19:22

20 SZC, nor, we presume, by the 17:19:25

21 Tolkien Estate. We have not yet 17:19:27

22 investigated this particular 17:19:33

23 matter. However, we wanted to 17:19:34

24 bring it to your attention because 17:19:36

25 it represents an area, like music, 17:19:37

1 that could benefit from a more 17:19:39
2 focused enforcement effort, 17:19:41
3 particularly in light of our 17:19:43
4 existing massively multiplayer 17:19:43
5 online game license with Vivendi 17:19:46
6 Universal Games." 17:19:48

7 Now, when you received this e-mail and read 17:19:50
8 it, did you understand it? 17:19:54

9 A. I have no recollection of -- 17:19:57

10 MS. ESKENAZI: Objection. 17:19:57

11 THE WITNESS: -- receiving this e-mail. 17:19:58

12 MS. ESKENAZI: Objection. Vague -- 17:19:59

13 BY MR. PETROCELLI: 17:19:59

14 Q. You don't deny receiving it, do you? 17:20:00

15 MS. ESKENAZI: Objection. Vague and 17:20:02
16 ambiguous. Assumes facts not in evidence. 17:20:03

17 BY MR. PETROCELLI: 17:20:03

18 Q. You don't deny receiving it, do you? 17:20:28

19 A. I have no recollection of it. 17:20:30

20 Q. But you're not denying it, are you? 17:20:31

21 MS. ESKENAZI: Objection. Asked and 17:20:33
22 answered. 17:20:34

23 THE WITNESS: I can only tell you I don't 17:20:35
24 recognize it and I have no recollection of it. 17:20:37

25 BY MR. PETROCELLI: 17:20:37

1 Q. In 2004, when you received an e-mail in the 17:20:39
2 course of your work for the Tolkiens that had 17:20:41
3 reference to an online game, including an online 17:20:44
4 game license with Vivendi Universal, is it fair to 17:20:50
5 say that you would have understood the words used in 17:20:55
6 this letter? 17:20:58

7 MS. ESKENAZI: Objection. Vague and 17:20:58
8 ambiguous. 17:21:02

9 THE WITNESS: I don't know. 17:21:02

10 MS. ESKENAZI: Calls for speculation. 17:21:03
11 Lacks foundation. 17:21:04

12 BY MR. PETROCELLI: 17:21:04

13 Q. Well, did you call back and -- or write 17:21:05
14 back and say, "I don't understand what online means. 17:21:06
15 I've never heard of such a word before" or "Can you 17:21:09
16 please explain what online means? Does it involve a 17:21:12
17 physical product? Does it -- do you have to go into 17:21:14
18 the store? I want to make sure." 17:21:17

19 Did you -- do you recall doing any of those 17:21:18
20 things or asking any of those questions? 17:21:20

21 MS. ESKENAZI: Objection. Compound. Vague 17:21:22
22 and ambiguous. Assumes facts not in evidence. 17:21:25

23 THE WITNESS: I have no recollection of 17:21:26
24 this e-mail or anything surrounding this e-mail. 17:21:28

25 BY MR. PETROCELLI: 17:21:28

1 Q. Assuming you received this e-mail, and 17:21:33
2 there's no reason to believe you didn't, as you 17:21:35
3 previously testified, looking at it now, do you 17:21:37
4 believe that you would have inquired, in carrying 17:21:40
5 out your duties, whether the on game -- online game 17:21:44
6 license with Vivendi and Zaentz was one that 17:21:47
7 involved the purchase of a disc or -- or a cartridge 17:21:53
8 to confirm your understanding of what "online" 17:22:00
9 means? 17:22:04

10 A. I would not -- 17:22:05

11 MS. ESKENAZI: Objection. Vague and 17:22:05
12 ambiguous. Assumes facts not in evidence. 17:22:06
13 Compound. 17:22:08

14 THE WITNESS: I would not have been aware 17:22:09
15 of the possibility of a game that didn't involve a 17:22:12
16 disc or cartridge. 17:22:14

17 BY MR. PETROCELLI: 17:22:14

18 Q. Why is that? 17:22:16

19 A. Because I wasn't aware of that possibility 17:22:16
20 until September, October 2010. 17:22:20

21 Q. But you were aware that music could be 17:22:22
22 downloaded without a disc or a cartridge. 17:22:24

23 MS. ESKENAZI: Objection. Argumentative. 17:22:28

24 BY MR. PETROCELLI: 17:22:28

25 Q. Correct? 17:22:30

1 A. I'm talking about my knowledge of games. 17:22:31

2 Q. I know. But is -- do you have any basis 17:22:32

3 for why you would have had this -- this bizarre 17:22:35

4 interpretation, that games had to require a -- a 17:22:39

5 disc or cartridge, but you did not have it with 17:22:43

6 respect to music? 17:22:47

7 MS. ESKENAZI: Objection. Argumentative. 17:22:49

8 Mischaracterizes the testimony. Misleading. 17:22:50

9 MR. PETROCELLI: I'll take out the word 17:22:53

10 "bizarre." I'll re- -- I'll reask it -- 17:22:55

11 MS. ESKENAZI: Thank you. 17:22:55

12 MR. PETROCELLI: -- okay? 17:22:57

13 Q. Is there any reason why, in 2004, you -- 17:22:58

14 you would have held -- you would have understood 17:23:01

15 that music could be downloaded without going into a 17:23:03

16 store and buying the music on a disc or a cartridge, 17:23:05

17 but a game could not be? Do you recall having such 17:23:10

18 a distinction in your mind between music and games? 17:23:14

19 A. I don't recall having addressed my mind to 17:23:18

20 that issue. 17:23:20

21 Q. Is it -- are you certain, though, that when 17:23:23

22 you received this letter that you would have 17:23:29

23 understood that all the references to online games 17:23:33

24 required a physical disc or cartridge? Is that a 17:23:40

25 certainty in your mind? 17:23:45

1 MS. ESKENAZI: Objection. Vague and 17:23:46

2 ambiguous. And assumes facts not in evidence. 17:23:49

3 Misleading. Misstates the testimony. 17:23:51

4 THE WITNESS: I'm certain that I wasn't 17:23:56

5 aware at that time that a game could be purchased 17:23:57

6 otherwise than by way of physical media. 17:24:00

7 BY MR. PETROCELLI: 17:24:00

8 Q. Were you even prompted to ask that 17:24:02

9 question? 17:24:07

10 MS. ESKENAZI: Objection. Vague and 17:24:08

11 ambiguous. 17:24:08

12 THE WITNESS: As I've told you, I have no 17:24:10

13 recollection of receiving this e-mail or any other 17:24:12

14 events surrounding it. 17:24:14

15 BY MR. PETROCELLI: 17:24:14

16 Q. Were you -- if you -- assuming you did 17:24:15

17 receive it -- and because you have not produced it, 17:24:17

18 we have been prejudiced because I don't have the 17:24:23

19 ability now to confront you with the copy that's in 17:24:26

20 your files because it may have been destroyed or 17:24:29

21 spoliated or may be still sitting in your files, an 17:24:32

22 issue we will take up with the Court. 17:24:36

23 All that aside, do you believe you would 17:24:37

24 have at least inquired, asked a simple question or 17:24:42

25 wrote and said, "I want to be sure this is an online 17:24:47

1 game that's involving a physical device or 17:24:51

2 cartridge"? 17:24:54

3 MS. ESKENAZI: Objection. Move to strike 17:24:57

4 all the colloquy as argumentative. And it assumes 17:25:00

5 facts not in evidence. It's compound. And it's 17:25:07

6 vague and ambiguous. 17:25:09

7 BY MR. PETROCELLI: 17:25:09

8 Q. Put aside the colloquy. Just answer the 17:25:11

9 question. 17:25:13

10 A. No, I do not believe I would have done 17:25:14

11 that. 17:25:16

12 Q. Why not? 17:25:16

13 A. Because I had no knowledge that games were 17:25:19

14 available otherwise than by way of -- 17:25:23

15 Q. But how would you -- 17:25:26

16 A. -- physical media. 17:25:25

17 Q. -- even know they were available in the way 17:25:27

18 that you thought they were available? 17:25:29

19 A. I don't recall. 17:25:31

20 MS. ESKENAZI: Objection. Vague and 17:25:31

21 ambiguous. 17:25:31

22 BY MR. PETROCELLI: 17:25:31

23 Q. How would you have had such a clear certain 17:25:33

24 belief about something that you apparently did 17:25:35

25 nothing to investigate? 17:25:38

1 MS. ESKENAZI: Objection. Vague and 17:25:42
2 ambiguous. 17:25:42

3 THE WITNESS: I don't recall. 17:25:45

4 BY MR. PETROCELLI: 17:25:46

5 Q. How do you know that games could even be -- 17:25:46

6 were even available on a disc or a cartridge? How 17:25:48

7 did you even know that? 17:25:50

8 A. I don't recall. 17:25:53

9 Q. Did you ever go into a game store and -- 17:25:54

10 and check it out and see how games are purchased and 17:25:56

11 in what kind of form they come? Did you do that? 17:25:59

12 A. I have been in a game store; not for the 17:26:05

13 purpose of checking out the form of games. 17:26:07

14 Q. But when you were in a game store, was it 17:26:09

15 before September of 2010? 17:26:10

16 A. Yes. 17:26:11

17 Q. When is the first time you've been in a 17:26:12

18 store that sold computer games? 17:26:14

19 MS. ESKENAZI: Objection. Vague and 17:26:19

20 ambiguous. 17:26:19

21 BY MR. PETROCELLI: 17:26:19

22 Q. When is the first time in your life you've 17:26:20

23 been in a store that sold computer games? 17:26:23

24 A. I don't recall. 17:26:25

25 MS. ESKENAZI: Objection. Vague and 17:26:26

1 | ambiguous. 17:26:26

2 BY MR. PETROCELLI: 17:26:26

3 Q. When is the first time -- did you ever buy 17:26:27

4 a computer game for your kids, for example, or 17:26:28

5 | yourself? 17:26:29

6	A. Yes.	17:26:30
---	---------	----------

7 Q. When is the first time you did that? 17:26:31

8 A. I don't recall. 17:26:33

9	0. Okay. Do your kids play computer games	17:26:37
---	---	----------

10 | online, with other people online? 17:26:39

11	MS. ESKENAZI: Objection. Relevance.	17:26:43
----	-------------------------------------	----------

12 THE WITNESS: I don't know what kind of 17:26:44

13	games my kids play.	17:26:45
----	---------------------	----------

14 BY MR. PETROCELLI: 17:26:45

15 Q. Have you ever asked a salesperson whether, 17:26:48

16 | you know, if you buy this game, can you play online 17:26:50

17	with other people and have you ever had	17:26:52
----	---	----------

18	conversations with how computer games go with	17:26:54
----	---	----------

19	computer games salespeople?	17:26:56
----	-----------------------------	----------

20	A. No.	17:26:58
----	--------	----------

21 Q. Okay. Is it possible, sir, that the reason 17:27:02

22 | why you have this clear definite view that the 17:27:04

23	computer games online have to involve a physical	17:27:10
----	--	----------

24 | cartridge or disc is because you think that's 17:27:16

25 helpful to your client's interpretation of the 17:27:21

1 merchandising agreement? 17:27:25

2 MS. ESKENAZI: Objection. 17:27:26

3 BY MR. PETROCELLI: 17:27:26

4 Q. Do you think that's a possibility? 17:27:28

5 MS. ESKENAZI: Objection. Argumentative. 17:27:29

6 THE WITNESS: No. 17:27:31

7 BY MR. PETROCELLI: 17:27:31

8 Q. Well, at the time that you formed this view 17:27:33

9 that computer games had to involve a physical, 17:27:37

10 tangible disc or cartridge, you were aware of the 17:27:42

11 provision in the 1969 merchandising agreement in 17:27:47

12 schedule D that contained the words "article of 17:27:52

13 tangible personal property," correct? 17:27:57

14 MS. ESKENAZI: Objection. Vague and 17:28:01

15 ambiguous. 17:28:02

16 THE WITNESS: I don't believe that's 17:28:05

17 correct. 17:28:05

18 BY MR. PETROCELLI: 17:28:05

19 Q. When is the first time that you became 17:28:06

20 aware that there was a contract involving the 17:28:08

21 Zaentz -- involving the Tolkien Estate that had 17:28:13

22 those words in it, "article of tangible personal 17:28:19

23 property" 17:28:22

24 A. I don't recall. 17:28:24

25 Q. Did you know about that before September 17:28:24

1 2010? 17:28:29

2 A. Yes. 17:28:29

3 Q. Okay. Is it fair to say that you've known 17:28:34

4 that that wording was in the operative agreement 17:28:36

5 during the 2000 time frame? 17:28:43

6 A. I believe that wording was in those 17:28:45

7 agreements, yes. 17:28:48

8 Q. You had knowledge that the wording was in 17:28:49

9 the agreement from about the time you started 17:28:51

10 working on Tolkien matters, correct? 17:28:54

11 A. No, I don't recall when I was first aware 17:28:57

12 of that particular provision. 17:28:59

13 Q. Well, you were aware of it by year 2000, 17:29:00

14 correct? 17:29:00

15 MS. ESKENAZI: Objection. Misstates the 17:29:04

16 evidence. Misleading. 17:29:05

17 THE WITNESS: No. 17:29:06

18 BY MR. PETROCELLI: 17:29:06

19 Q. When -- what year is your best estimate 17:29:09

20 when you first became aware that there was any 17:29:11

21 contractual language involving the Zaentzes that 17:29:15

22 contained that language? 17:29:18

23 MS. ESKENAZI: Objection. Vague and 17:29:20

24 ambiguous. 17:29:22

25 THE WITNESS: I don't recall when I first 17:29:22

1 became aware of that. 17:29:24

2 BY MR. PETROCELLI: 17:29:24

3 Q. Was it before or after 2004? 17:29:25

4 A. I don't recall. 17:29:30

5 Q. So it's your testimony that -- by the way, 17:29:30

6 do you believe that, as you've been giving your 17:29:34

7 testimony today, that an online computer game that 17:29:37

8 has a physical component like a disc or storage -- a 17:29:42

9 disc or a cartridge on which the game contents are 17:29:48

10 stored, do you believe that's a -- an article of 17:29:50

11 tangible personal property? 17:29:54

12 A. I'm sorry, please, would you repeat the 17:29:58

13 question. 17:29:59

14 Q. Yes. 17:30:00

15 THE WITNESS: Would you read it back. 17:30:00

16 (The reporter read the record 17:30:00

17 as follows: 17:30:00

18 "QUESTION: So it's your 17:29:31

19 testimony that -- by the way, do 17:29:31

20 you believe that, as you've been 17:29:34

21 giving your testimony today, that 17:29:36

22 an online computer game that has a 17:29:39

23 physical component like a disc or 17:29:43

24 storage -- a disc or a cartridge 17:29:46

25 on which the game contents are 17:29:49

1 stored, do you believe that's an 17:29:50
2 article of tangible personal 17:29:54
3 property?") 17:29:55
4 MS. ESKENAZI: Objection. Vague and 17:30:16
5 ambiguous. 17:30:18
6 THE WITNESS: I believe that the disc -- 17:30:18
7 MS. ESKENAZI: And calls for a legal 17:30:20
8 conclusion. 17:30:21
9 THE WITNESS: I believe that the disc or 17:30:21
10 cartridge is an article of tangible personal 17:30:25
11 property. 17:30:27
12 BY MR. PETROCELLI: 17:30:27
13 Q. So you believe such a video game or 17:30:28
14 computer game would be authorized by the license, 17:30:29
15 right? 17:30:29
16 MS. ESKENAZI: Objection. Calls for a 17:30:33
17 legal conclusion. 17:30:34
18 THE WITNESS: If it's purchased by way of 17:30:35
19 physical media. 17:30:38
20 BY MR. PETROCELLI: 17:30:38
21 Q. So the answer to my question is yes, 17:30:41
22 correct? It would be authorized by the license 17:30:44
23 agreement, right? 17:30:46
24 MS. ESKENAZI: Same objection. 17:30:47
25 THE WITNESS: If it's purchased by way of 17:30:48

1 physical media. 17:30:49

2 BY MR. PETROCELLI: 17:30:49

3 Q. What if it's rented? 17:30:51

4 MS. ESKENAZI: Objection. Vague and 17:30:53

5 ambiguous. 17:30:53

6 BY MR. PETROCELLI: 17:30:53

7 Q. What if you went into the game store and 17:30:54

8 rented it? You're saying it wouldn't be covered by 17:30:56

9 the license? 17:30:58

10 A. I would need to review the license as to 17:30:59

11 rentals. 17:31:01

12 Q. So the -- what -- what do you mean by 17:31:02

13 "physical media"? Suppose it's just a box with a -- 17:31:11

14 with a code inside the box and you go into your 17:31:16

15 computer and type in the code and get the game that 17:31:19

16 way? Is that covered? 17:31:22

17 A. I'm not -- 17:31:23

18 MS. ESKENAZI: Objection. Vague and 17:31:23

19 ambiguous. Calls for a legal conclusion. 17:31:24

20 THE WITNESS: I'm not aware of games of 17:31:25

21 that nature. 17:31:28

22 BY MR. PETROCELLI: 17:31:28

23 Q. So what did you mean? You mean like a -- a 17:31:30

24 full -- where the disc or cartridge has the whole 17:31:32

25 software for the game on it? 17:31:35

1 MS. ESKENAZI: Objection. Vague and 17:31:38
2 ambiguous. 17:31:39

3 THE WITNESS: That in order to install the 17:31:42
4 game on your computer, you need to start with 17:31:46
5 physical media such as a disc or cartridge. 17:31:50

6 BY MR. PETROCELLI: 17:31:50

7 Q. Now, where did you get that notion from? 17:31:53

8 A. That's how I understood it worked. 17:31:55

9 Q. What worked? 17:31:57

10 A. How you played a game on your computer. 17:32:00

11 Q. And you understand that's the only way a 17:32:01
12 computer game could be played, correct? 17:32:04

13 MS. ESKENAZI: Objection. Relevance. 17:32:06
14 Misstates the evidence. Misleading. 17:32:07

15 BY MR. PETROCELLI: 17:32:07

16 Q. Until September -- 17:32:11

17 MS. ESKENAZI: Vague and -- 17:32:11

18 BY MR. PETROCELLI: 17:32:11

19 Q. -- 2010 -- 17:32:12

20 MS. ESKENAZI: Vague and ambiguous. 17:32:12

21 BY MR. PETROCELLI: 17:32:12

22 Q. -- you understood that's the only way a 17:32:13
23 human being could play a computer game, is they had 17:32:14
24 to go into a store and they had to somehow obtain 17:32:18
25 some physical media, as you put it, like a disc or a 17:32:21

1 cartridge, and then take it home and then put it 17:32:28

2 into a computer, correct? 17:32:30

3 A. Well, I didn't say they had to go into a 17:32:33

4 store, but the rest of the question, yes, correct. 17:32:35

5 Q. Well, how else are they going to get it? 17:32:38

6 A. Well, they could buy it from Amazon, for 17:32:40

7 example. 17:32:40

8 Q. Okay. So they had -- someone had to bring 17:32:42

9 it into their home, carry it in their home, mailman 17:32:43

10 or a friend or themselves, but it had to be 17:32:47

11 physically transported to their house or to their 17:32:49

12 place of use, correct? 17:32:52

13 MS. ESKENAZI: Objection. It's vague and 17:32:57

14 ambiguous. Compound. 17:32:57

15 BY MR. PETROCELLI: 17:32:57

16 Q. Right? 17:32:58

17 A. That was my understanding. 17:32:58

18 Q. And yet you can't give us -- and you 17:32:59

19 haven't been able to tell us at all how you somehow 17:33:03

20 derived that understanding, correct? 17:33:06

21 MS. ESKENAZI: Well, vague and ambiguous. 17:33:08

22 Objection. 17:33:09

23 THE WITNESS: I don't -- 17:33:09

24 MS. ESKENAZI: Misstates the testimony. 17:33:12

25 THE WITNESS: I don't know how or when I 17:33:14

1 derived that understanding. 17:33:17

2 BY MR. PETROCELLI: 17:33:17

3 Q. And you're unable to give us any details, 17:33:18

4 any information, anything whatsoever about how you 17:33:20

5 derived that, when you derived that and so forth, 17:33:23

6 correct? 17:33:23

7 MS. ESKENAZI: Same objections. 17:33:27

8 BY MR. PETROCELLI: 17:33:27

9 Q. Correct? 17:33:29

10 A. Correct. 17:33:29

11 Q. Okay. Now, that understanding that you 17:33:31

12 cannot explain how you derived, happens to be 17:33:34

13 exactly what you believe the merchandising agreement 17:33:39

14 calls for, correct? 17:33:46

15 MS. ESKENAZI: Objection. Misstates the 17:33:48

16 testimony. Vague and ambiguous. Calls for a legal 17:33:50

17 conclusion. Argumentative. 17:33:52

18 THE WITNESS: Well, no, I'm not linking the 17:33:55

19 two things in my mind. 17:33:58

20 BY MR. PETROCELLI: 17:33:59

21 Q. It's a coincidence, though, that your view, 17:33:59

22 your -- this sort of immaculate interpretation that 17:34:02

23 you have of the -- of -- of a computer game happens 17:34:07

24 to fit the definition that you give to articles of 17:34:13

25 personal -- tangible personal property in the 17:34:19

1 merchandising agreement, correct? 17:34:21

2 MS. ESKENAZI: Objection. Argumentative. 17:34:22

3 Calls for a legal conclusion. Vague and ambiguous. 17:34:27

4 Misstates the testimony. 17:34:29

5 THE WITNESS: Until September, 17:34:32

6 October 2010, my understanding was that games came 17:34:36

7 on physical media. 17:34:40

8 BY MR. PETROCELLI: 17:34:42

9 Q. Well, let's be clear about something. 17:34:43

10 Whenever this agreement was created back in 1969, 17:34:45

11 and it used the words "articles of personal" -- 17:34:49

12 "tangible personal property," you would agree these 17:34:53

13 computer games that you've been describing, with 17:34:57

14 discs and cartridges containing the contents, they 17:35:02

15 didn't exist in 1969, to your knowledge, correct? 17:35:05

16 A. I can't remember when the first consoles 17:35:12

17 appeared, but I think that's right, they wouldn't 17:35:14

18 have existed -- 17:35:16

19 Q. Right. 17:35:16

20 A. -- in 1969. 17:35:16

21 Q. Right. And you have no evidence that when 17:35:17

22 the folks signed that agreement in 1969, that they 17:35:19

23 had in mind this precise definition of "computer 17:35:22

24 games" that you're describing, correct? 17:35:25

25 MS. ESKENAZI: Objection. Calls for 17:35:28

1 speculation. 17:35:29

2 BY MR. PETROCELLI: 17:35:29

3 Q. You would agree that that didn't happen, 17:35:30

4 right? 17:35:30

5 A. I don't know -- 17:35:30

6 MS. ESKENAZI: Calls for speculation. 17:35:32

7 Lacks foundation. 17:35:33

8 THE WITNESS: I don't know what the folks 17:35:35

9 had in mind. 17:35:37

10 BY MR. PETROCELLI: 17:35:37

11 Q. Okay. But you would agree that given that 17:35:39

12 these games did not even exist in 1969, that's not 17:35:41

13 even possible, is it? 17:35:44

14 MS. ESKENAZI: Objection. Calls for 17:35:45

15 speculation. Lacks foundation. 17:35:47

16 THE WITNESS: I don't know what the folks 17:35:48

17 had in mind. 17:35:49

18 BY MR. PETROCELLI: 17:35:49

19 Q. Well, but you can use your common sense and 17:35:51

20 everything you do know, and that informs your view 17:35:53

21 that no -- no such distinctions about computer games 17:35:56

22 were being made in 1969, correct? 17:35:59

23 A. I don't know. 17:36:03

24 Q. Well, do you have any reason to believe it 17:36:04

25 was? 17:36:09

1 MS. ESKENAZI: Objection. Calls for 17:36:09
2 speculation. Lacks foundation. 17:36:10

3 THE WITNESS: I'm sorry. Do I have any -- 17:36:12

4 BY MR. PETROCELLI: 17:36:12

5 Q. Yes. 17:36:12

6 THE WITNESS: -- reason to believe -- 17:36:13

7 BY MR. PETROCELLI: 17:36:14

8 Q. Do you have reason to believe that when -- 17:36:15

9 when the parties signed the agreements in 1969 17:36:16

10 containing the words "articles of personal tangible 17:36:18

11 property," that at that time the parties were 17:36:21

12 specifically contemplating that one day if computer 17:36:24

13 games come along, the only computer games that are 17:36:27

14 going to be covered by this language are those 17:36:30

15 contained in some physical box or disc or cartridge 17:36:32

16 but not those that are downloadable only? Do you 17:36:38

17 believe that folks actually discussed that and 17:36:43

18 contemplated those sorts of distinctions back in 17:36:45

19 1969? 17:36:48

20 A. I have no idea. 17:36:48

21 MS. ESKENAZI: Objection. Vague and 17:36:49

22 ambiguous. 17:36:49

23 BY MR. PETROCELLI: 17:36:49

24 Q. Well, do you have any -- do you have an 17:36:50

25 idea that they did not because nobody ever heard of 17:36:51

1 such things back in 1969? Would you agree with 17:36:52

2 that? 17:36:56

3 A. I don't have an idea that they did or that 17:36:58

4 they did not. I don't know. 17:37:00

5 Q. You can rule out that they did -- that they 17:37:01

6 did, because such things didn't exist in 1969, 17:37:04

7 correct? 17:37:04

8 A. I don't know what the state of knowledge 17:37:08

9 was in 1969. 17:37:10

10 Q. So you think they might have existed in 17:37:11

11 1969? 17:37:13

12 A. I don't know. I can't help with this. 17:37:14

13 Q. Do you have any information that it did 17:37:16

14 exist in 1969? 17:37:17

15 A. Not as I sit here today. 17:37:19

16 Q. Okay. Now, at some point you looked at 17:37:23

17 the -- the merchandising agreement and saw "articles 17:37:30

18 of personal" -- "tangible" -- "tangible personal 17:37:32

19 property" referenced there, right? We've gone over 17:37:36

20 that, correct? 17:37:38

21 A. At some time I saw that -- 17:37:40

22 Q. Right. 17:37:41

23 A. -- yes. 17:37:41

24 Q. And there came a time when you realized 17:37:41

25 that with respect to computer games, that definition 17:37:47

1 happened to match exactly your view of computer 17:37:51

2 games. 17:37:54

3 When did that happen? 17:37:55

4 MS. ESKENAZI: Objection. Vague and 17:37:56

5 ambiguous. Assumes facts not in evidence. Calls 17:37:58

6 for a legal conclusion. 17:38:00

7 THE WITNESS: No, I never had that 17:38:01

8 recognition. 17:38:03

9 BY MR. PETROCELLI: 17:38:03

10 Q. So is it a pure coincidence that your 17:38:06

11 understanding of -- of how computer games worked 17:38:08

12 until September 2010 happened to be exactly what you 17:38:11

13 think the merchandising agreement requires? 17:38:14

14 MS. ESKENAZI: Objection. Calls for 17:38:17

15 speculation. Vague and ambiguous. Assumes facts 17:38:22

16 not in evidence. Calls for a legal conclusion. 17:38:23

17 Misstates the evidence. 17:38:24

18 THE WITNESS: What you characterize as a 17:38:28

19 coincidence is simply two factual things. 17:38:29

20 BY MR. PETROCELLI: 17:38:29

21 Q. What are the two factual things? 17:38:35

22 THE WITNESS: Would you read back the 17:38:39

23 previous question. 17:38:40

24 (The reporter read the record 17:38:40

25 as follows: 17:38:40

1 "QUESTION: So is it a pure 17:38:06
2 coincidence that your 17:38:07
3 understanding of how computer 17:38:08
4 games worked until September 2010 17:38:10
5 happened to be exactly what you 17:38:12
6 think the merchandising agreement 17:38:14
7 requires?") 17:38:16

8 THE WITNESS: I -- I really don't 17:38:54
9 understand the question. 17:38:54

10 BY MR. PETROCELLI: 17:38:54

11 Q. You -- you believe that downloadable-only 17:38:59
12 games are or are not covered by the merchandising 17:39:07
13 agreement? 17:39:09

14 MS. ESKENAZI: Objection. Calls for a 17:39:11
15 legal conclusion. 17:39:12

16 THE WITNESS: That is the position taken by 17:39:14
17 the Tolkien Estate in this litigation. 17:39:16

18 BY MR. PETROCELLI: 17:39:16

19 Q. What is the position? That they are -- 17:39:18

20 A. Downloadable games -- 17:39:20

21 Q. -- or are not? 17:39:20

22 A. -- are not included. 17:39:21

23 Q. Okay.

24 THE REPORTER: That the what games?

25 MR. PETROCELLI: "Are not included."

1 THE WITNESS: "Downloadable."

2 THE REPORTER: Thank you.

3 BY MR. PETROCELLI:

4 Q. And the reason that position is being 17:39:28
5 asserted is the view that downloadable-only games do 17:39:29
6 not constitute articles of tangible personal 17:39:32
7 property, correct? 17:39:37

8 A. Correct. 17:39:37

9 MS. ESKENAZI: Objection. Calls for a -- 17:39:38

10 BY MR. PETROCELLI: 17:39:38

11 Q. And the reason why -- 17:39:39

12 MS. ESKENAZI: -- legal conclusion. 17:39:39

13 BY MR. PETROCELLI: 17:39:39

14 Q. -- the position is being taken that they 17:39:40
15 don't constitute articles of tangible personal 17:39:42
16 property is because there's no disc or cartridge 17:39:45
17 that's being purchased that contains the contents of 17:39:52
18 the game, correct? 17:39:55

19 MS. ESKENAZI: Objection. Calls for a 17:39:59
20 legal conclusion. 17:40:00

21 THE WITNESS: Correct. 17:40:02

22 BY MR. PETROCELLI: 17:40:02

23 Q. Okay. And so games that are 17:40:05
24 downloadable-only that don't involve the purchase of 17:40:11
25 a disc or a cartridge the Estate says are not 17:40:15

1 covered, right? 17:40:19

2 MS. ESKENAZI: Objection. Calls for a 17:40:20

3 legal conclusion. 17:40:23

4 THE WITNESS: Right. 17:40:23

5 BY MR. PETROCELLI: 17:40:23

6 Q. Because the Estate has asserted that such 17:40:24

7 games don't -- don't include or involve an article 17:40:26

8 of tangible personal property, correct? 17:40:29

9 MS. ESKENAZI: Same objection. 17:40:32

10 THE WITNESS: Correct. 17:40:34

11 BY MR. PETROCELLI: 17:40:34

12 Q. Okay. Now, when -- when did the Estate 17:40:36

13 make that decision? 17:40:49

14 MS. ESKENAZI: Objection. Attorney-client 17:40:49

15 privileged communication. 17:40:50

16 BY MR. PETROCELLI: 17:40:50

17 Q. When? When? When was that idea born, that 17:40:51

18 downloadable-only doesn't involve an article of 17:40:56

19 tangible personal property? 17:40:59

20 MS. ESKENAZI: Same objection. 17:41:03

21 To the extent that you received that 17:41:06

22 information from the clients, it's 17:41:08

23 attorney-client -- 17:41:16

24 MR. PETROCELLI: It's a "when" question. 17:41:19

25 MS. ESKENAZI: -- privileged information. 17:41:17

1 THE REPORTER: "It's attorney-client
2 privileged"?

3 MS. ESKENAZI: It's attorney-client
4 privileged information.

5 THE WITNESS: Would you read back the
6 question, please.

7 (The reporter read the record
8 as follows:

9 "QUESTION: When? When was 17:40:52
10 that idea born, that 17:40:53
11 downloadable-only doesn't involve 17:40:57
12 an article of tangible personal 17:40:59
13 property?") 17:41:00

14 THE WITNESS: I don't understand the 17:41:34
15 characterization that the idea was born. 17:41:35

16 BY MR. PETROCELLI: 17:41:35

17 Q. What don't you understand about it? When 17:41:38
18 was that position first formed? 17:41:42

19 A. In September, October 2010, the state -- 17:41:45
20 the Estate became aware that Zaentz and/or Warner 17:41:49
21 were asserting the rights to license 17:41:55
22 downloadable-only games, which the Estate concluded 17:41:59
23 was contrary to the terms of the license agreement. 17:42:05

24 Q. Did you so conclude? 17:42:07

25 A. Yes, I did. 17:42:08

1 MS. ESKENAZI: Objection. 17:42:12

2 Attorney-client -- 17:42:12

3 BY MR. PETROCELLI: 17:42:12

4 Q. How -- 17:42:12

5 MS. ESKENAZI: -- privilege. 17:42:13

6 BY MR. PETROCELLI: 17:42:13

7 Q. How did you do it? 17:42:13

8 MS. ESKENAZI: Well, objection. Work 17:42:16

9 product. 17:42:18

10 To the extent that you were analyzing this 17:42:20

11 as a lawyer, it calls for attorney work product 17:42:23

12 information and it's privileged. 17:42:29

13 BY MR. PETROCELLI: 17:42:29

14 Q. What did you -- what did you do? You 17:42:30

15 simply looked at the words "articles of personal" -- 17:42:32

16 "tangible personal property" and concluded that 17:42:36

17 downloadable-only doesn't fit that definition? Was 17:42:40

18 that what you did? 17:42:43

19 MS. ESKENAZI: Same instruction. Same 17:42:45

20 objection. If you want to take a short break, maybe 17:42:46

21 we can cut through this. 17:42:51

22 MR. PETROCELLI: Yeah, I don't think you 17:42:52

23 should be blocking him on this. But why don't 17:42:53

24 you -- why don't you take a break, sort it out. 17:42:55

25 MS. ESKENAZI: Why don't we do that. 17:42:56

1 THE VIDEOGRAPHER: This is the end of media 17:42:58
2 number 5. Off the record at 5:42 p.m. 17:43:00

3 (Brief recess.) 17:43:43

4 THE VIDEOGRAPHER: We are back on the 17:53:52
5 record at 5:54 p.m. and this is the beginning of 17:53:59
6 media number 6. Counsel may proceed. 17:54:03

7 MS. ESKENAZI: Okay. So we're going to let 17:54:06
8 the witness answer this one question to the extent 17:54:09
9 that's a stipulation that by -- by virtue of 17:54:12
10 answering this question, he's not going to be 17:54:15
11 waiving the attorney-client privilege or the work 17:54:17
12 product privilege. 17:54:20

13 MR. PETROCELLI: That's fine. 17:54:21

14 MS. ESKENAZI: Okay. 17:54:23

15 BY MR. PETROCELLI: 17:54:23

16 Q. So the question I put to you is what you 17:54:24
17 did to make the judgment that a downloadable-only 17:54:28
18 game wasn't an article of tangible personal 17:54:33
19 property? 17:54:34

20 A. I consulted with the Estate's U.S. counsel 17:54:37
21 and reviewed the words of the contract. 17:54:40

22 Q. Ms. Eskenazi? 17:54:41

23 A. Yes. 17:54:45

24 Q. Anyone else? 17:54:45

25 MS. ESKENAZI: Objection. Vague and 17:54:53

1 | ambiguous. 17:54:53

2 THE WITNESS: My contact was with 17:54:55

3 | Ms. Eskenazi. 17:54:57

4 BY MR. PETROCELLI: 17:54:58

5 0. Did you consult with anyone else besides 17:54:58

6	her?	17:55:01
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7 | A. I don't recall. 17:55:01

8 0. And to look at the contract, you looked at 17:55:02

9 the words I just said, right, "articles of tangible 17:55:09

10	personal property," right?	17:55:12
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11	MS. ESKENAZI: Objection. Vague and	17:55:13
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12	ambiguous. Misstates the evidence.	17:55:13
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13	THE WITNESS: The clause refers to the	17:55:15
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14 manufacture, I think, of articles of tangible 17:55:19

15 personal property. But that's the clause in 17:55:20

16	question.	17:55:23
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17	BY MR. PETROCELLI:	17:55:23
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18	Q. Are you attaching some significance now to	17:55:23
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19	the word "manufacture"?	17:55:26
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20 A. Well, all the words have significance. 17:55:29

21	Q. Isn't it more than manufacture? Is it	17:55:32
----	--	----------

22 manufacture, sale or distribution or words to that 17:55:34

23	effect?	17:55:36
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24 | A. I think that's right. 17:55:37

25 Q. Okay. So you -- how did you then decide -- 17:55:39

1 when you looked at the words, you concluded that 17:55:43

2 "downloadable-only" didn't -- didn't meet that 17:55:48

3 definition? 17:55:52

4 MS. ESKENAZI: Objection. It misstates the 17:55:53

5 testimony and this is -- 17:55:55

6 BY MR. PETROCELLI: 17:55:55

7 Q. Were you able -- 17:55:55

8 MS. ESKENAZI: -- this is starting to get 17:55:55

9 into more of work product. 17:55:57

10 MR. PETROCELLI: Let me rephrase the 17:55:58

11 question. 17:55:58

12 MS. ESKENAZI: Okay. 17:55:58

13 BY MR. PETROCELLI: 17:55:58

14 Q. Were you able to look at the definition 17:56:00

15 and -- and -- before consulting with Ms. Eskenazi, 17:56:03

16 were you able to make an opinion yourself, just 17:56:06

17 looking at the words, was it clear to you that it 17:56:10

18 didn't include a downloadable-only game? 17:56:14

19 MS. ESKENAZI: Objection. Assumes facts 17:56:18

20 not in evidence. It's compound and misstates the 17:56:21

21 witness' testimony. 17:56:24

22 THE WITNESS: It did not appear to me on a 17:56:24

23 common sense basis to meet that definition. 17:56:26

24 BY MR. PETROCELLI: 17:56:28

25 Q. Was it clear? Was the language -- in 17:56:28

1 your -- in your view, was the language of the 17:56:30
2 contract clear in that regard? 17:56:31

3 MS. ESKENAZI: Objection. Calls for a 17:56:34
4 legal conclusion. Attorney-client privileged 17:56:35
5 communication. Work product. And this is -- 17:56:37

6 MR. PETROCELLI: You have -- you have a -- 17:56:41
7 you have a running no -- no waiver agreement. 17:56:42

8 MS. ESKENAZI: I think this gets into the 17:56:47
9 essence of work product. 17:56:49

10 MR. PETROCELLI: I believe that, by the 17:56:50
11 way, that Ms. Blackburn answered these questions. 17:56:52

12 MS. ESKENAZI: I actually don't think so, 17:56:54
13 Dan. 17:56:56

14 MR. PETROCELLI: I think I did. I think I 17:56:56
15 asked her a lot more than these. 17:56:58

16 Q. But in any event, that's my question to 17:56:59
17 you. 17:57:05

18 MS. ESKENAZI: Again -- 17:57:05

19 BY MR. PETROCELLI: 17:57:05

20 Q. I don't purport to remember. 17:57:06

21 MS. ESKENAZI: -- to the extent -- to the 17:57:08
22 extent you're agreeing not to allow this to be a 17:57:09
23 waiver of attorney-client privilege or attorney work 17:57:11
24 product, I'll let him answer this one question. 17:57:13

25 MR. PETROCELLI: Please. 17:57:15

1 THE WITNESS: It's my personal view on a 17:57:15
2 common-sense definition that that was the case. 17:57:17

3 BY MR. PETROCELLI: 17:57:17

4 Q. Now, when you -- when you formed that view, 17:57:20
5 what did you understand that "downloadable" meant? 17:57:27

6 MS. ESKENAZI: Objection. Vague and 17:57:32
7 ambiguous. 17:57:32

8 THE WITNESS: I understood at that time 17:57:33
9 that Zaentz and Warner were asserting the right to 17:57:35
10 license games that didn't involve a physical 17:57:40
11 purchase. 17:57:43

12 BY MR. PETROCELLI: 17:57:43

13 Q. What do you understand "downloadable" 17:57:45
14 meant, "downloadable-only"? 17:57:48

15 A. In that context I -- 17:57:49

16 Q. Yes. 17:57:50

17 A. -- understood it to mean games that did not 17:57:51
18 involve a physical purchase. 17:57:53

19 Q. Okay. But they did involve a article of 17:57:54
20 tangible personal property, correct? 17:57:58

21 MS. ESKENAZI: Objection. Vague and 17:58:02
22 ambiguous. 17:58:02

23 THE WITNESS: No. 17:58:03

24 BY MR. PETROCELLI: 17:58:03

25 Q. Why not? 17:58:05

1 A. Because there was no physical product. 17:58:05

2 Q. Well, the -- the game was somewhere, wasn't 17:58:10

3 it? In a downloadable-only situation, the game has 17:58:14

4 to be somewhere for people to access it and 17:58:19

5 transport it into their -- into their computers so 17:58:22

6 they can play it, right? 17:58:26

7 MS. ESKENAZI: Objection. Assumes facts 17:58:28

8 not in evidence. 17:58:29

9 THE WITNESS: I couldn't see how you would 17:58:31

10 meet the definition of "tangible" without a physical 17:58:32

11 product. 17:58:35

12 BY MR. PETROCELLI: 17:58:35

13 Q. Well, the -- the -- the company -- you 17:58:37

14 understood there was a company, in this case, 17:58:41

15 Turbine, for example, for LOTRO, that made the game, 17:58:42

16 right? 17:58:46

17 MS. ESKENAZI: Objection. 17:58:46

18 BY MR. PETROCELLI: 17:58:47

19 Q. Somebody had to make the game. It didn't 17:58:47

20 just magically show up one day. You understood 17:58:49

21 that, right, someone had to manufacture the game, 17:58:51

22 correct? 17:58:51

23 MS. ESKENAZI: Objection. Assumes facts 17:58:54

24 not in evidence. Vague and ambiguous. Compound. 17:58:54

25 THE WITNESS: I was aware that computer 17:59:01

1 games had developers. 17:59:02

2 BY MR. PETROCELLI: 17:59:02

3 Q. Okay. Someone developed and created the 17:59:04

4 game, correct? 17:59:05

5 A. Yes. 17:59:05

6 Q. Well, how do you believe the public got 17:59:07

7 access to the game in a downloadable-only situation? 17:59:09

8 A. I believe it's transferred from one 17:59:12

9 computer server to another. 17:59:23

10 Q. And how did it get on the server? 17:59:25

11 MS. ESKENAZI: Objection. Assumes facts 17:59:31

12 not in evidence. 17:59:33

13 THE WITNESS: By way of download. 17:59:34

14 BY MR. PETROCELLI: 17:59:34

15 Q. Okay. And you don't believe a -- a server 17:59:37

16 is -- is a item of tangible personal property? 17:59:40

17 MS. ESKENAZI: Objection. Vague and 17:59:45

18 ambiguous. 17:59:49

19 THE WITNESS: I don't understand the 17:59:49

20 question. There's no server being sold in this 17:59:49

21 instance. 17:59:51

22 BY MR. PETROCELLI: 17:59:51

23 Q. Well, who is talking about selling now? 17:59:52

24 You're adding -- we're -- I'm focusing on tangible 17:59:54

25 personal property. 17:59:57

1 You indicated before that in the case of 17:59:58
2 going into a store, you're buying some kind of 18:00:01
3 physical product, right, a cartridge, a disc. 18:00:05

4 Are you with me so far? 18:00:10

5 A. Yeah. 18:00:10

6 Q. Okay. Instead of a physical cartridge or 18:00:11
7 disc -- you understand the actual plastic cartridge 18:00:14
8 or disc is not the game. You understand that the 18:00:17
9 game -- the game -- that's a method of storing or 18:00:19
10 containing the game, the disc or the cartridge, 18:00:24
11 correct? 18:00:28

12 MS. ESKENAZI: Objection. Misstates the 18:00:29
13 evidence. Assumes facts not in evidence. Calls for 18:00:30
14 an expert opinion. 18:00:33

15 THE WITNESS: I believe that the physical 18:00:35
16 media contains software. 18:00:38

17 BY MR. PETROCELLI: 18:00:38

18 Q. Okay. And -- and why is a server any 18:00:41
19 different than the physical media that contains the 18:00:45
20 software in the -- that you go into a store and can 18:00:49
21 find in the form of a disc or a cartridge? 18:00:54

22 MS. ESKENAZI: Objection. Asked and 18:00:55
23 answered. 18:00:56

24 You can answer again. 18:00:57

25 THE WITNESS: I'm sorry, I'm confused. No 18:00:57

1 one is buying or selling a server. 18:00:59

2 BY MR. PETROCELLI: 18:00:59

3 Q. So, in your view -- well, they are buying 18:01:01

4 the game, though, correct? 18:01:04

5 MS. ESKENAZI: Objection. 18:01:06

6 BY MR. PETROCELLI: 18:01:06

7 Q. When they download it on the computer, 18:01:07

8 correct? 18:01:07

9 MS. ESKENAZI: Objection. Vague and 18:01:09

10 ambiguous. Compound. 18:01:10

11 BY MR. PETROCELLI: 18:01:10

12 Q. You understood that, right? These -- 18:01:11

13 A. Yeah. 18:01:11

14 Q. -- are not free games, right? 18:01:12

15 A. Yes. 18:01:12

16 Q. So you go into a store and you buy the 18:01:14

17 game. You buy the game, which is software that 18:01:16

18 appears on a particular type of storage device, 18:01:20

19 namely a disc or a cartridge. You -- you agree 18:01:22

20 that's covered, right? 18:01:25

21 MS. ESKENAZI: Objection. Vague and 18:01:27

22 ambiguous. Compound. 18:01:29

23 BY MR. PETROCELLI: 18:01:29

24 Q. Right? 18:01:34

25 A. Yes. 18:01:34

1 Q. On the other hand, if you buy the game, the 18:01:35
2 software of which appears on some central server, 18:01:38
3 which itself is a physical object, you don't believe 18:01:44
4 that's covered, correct? 18:01:46

5 A. Correct. 18:01:49

6 MS. ESKENAZI: Objection. 18:01:49

7 BY MR. PETROCELLI: 18:01:49

8 Q. Okay. And with respect to that distinction 18:01:50
9 between those two, you're able to arrive at that 18:01:53
10 conclusion, that one is covered and one is not, 18:01:59
11 merely by looking at the words on the contract? 18:02:01

12 MS. ESKENAZI: Misstates the evidence. 18:02:04

13 THE WITNESS: My conclusion was that 18:02:09
14 without a physical item, there was no article of 18:02:10
15 tangible personal property. 18:02:13

16 BY MR. PETROCELLI: 18:02:13

17 Q. And -- but the physical item you have in 18:02:15
18 mind is not the software that consists of the game. 18:02:17
19 The physical item you have in mind is the container 18:02:20
20 for the software, correct? 18:02:23

21 MS. ESKENAZI: Objection. Misstates the 18:02:25
22 evidence. Assumes facts not in evidence. 18:02:26
23 Misleading. 18:02:31

24 THE WITNESS: I think I can resolve this 18:02:32
25 very quickly by saying it's the same distinction 18:02:33

1 between physical books and e-books, which are 18:02:36

2 clearly two different licensing streams. 18:02:38

3 BY MR. PETROCELLI: 18:02:38

4 Q. You didn't answer my question. 18:02:40

5 A. I think I did. 18:02:41

6 Q. No, you didn't. 18:02:42

7 You -- you testified the game is the 18:02:44

8 software and the software appears on some physical 18:02:46

9 object, a physical medium, as you called it, a disc 18:02:49

10 or a cartridge. 18:02:53

11 MS. ESKENAZI: Misstates the evidence. 18:02:54

12 BY MR. PETROCELLI: 18:02:54

13 Q. And -- 18:02:54

14 A. Excuse me. I didn't testify that the game 18:02:56

15 was the software. I agreed with you that the 18:02:57

16 physical media contain software. 18:03:00

17 Q. Well, the game is in the -- is -- is 18:03:03

18 expressed by the software, not by the box or the 18:03:06

19 disc or the cartridge, correct? 18:03:09

20 MS. ESKENAZI: Objection. Misstates the 18:03:11

21 testimony. Assumes facts not in evidence. Calls 18:03:12

22 for -- 18:03:12

23 THE WITNESS: They're all -- 18:03:12

24 MS. ESKENAZI: -- expert opinion. 18:03:17

25 BY MR. PETROCELLI: 18:03:17

1 Q. You can buy an empty disc and cartridge and 18:03:18
2 you're not going to play a game, correct? 18:03:20

3 A. You can buy an empty disc and -- 18:03:22

4 Q. Right. 18:03:22

5 A. -- cartridge and you're not go to go play a 18:03:24
6 game. 18:03:25

7 Q. Okay. So the game is the software that 18:03:26
8 appears on the disc or the cartridge, correct? 18:03:27

9 A. No. I would say the game is the whole 18:03:31
10 thing. 18:03:32

11 Q. And if the game appears on a different 18:03:33
12 storage medium, namely a server, which you purchase 18:03:37
13 the game via the server instead of purch- -- 18:03:42
14 purchasing the game via the disc or the cartridge, 18:03:45
15 you say the server example is not covered, the disc 18:03:49
16 or cartridge is covered? 18:03:52

17 MS. ESKENAZI: Objection. Asked and 18:03:54
18 answered. Calls for expert opinion. Misstates the 18:03:55
19 evidence. Assumes facts not in evidence. 18:04:01

20 THE WITNESS: That was my opinion. 18:04:04

21 BY MR. PETROCELLI: 18:04:04

22 Q. And -- and you form -- and, in your view, 18:04:06
23 that opinion was crystal clear simply by reading the 18:04:08
24 contract? 18:04:12

25 MS. ESKENAZI: Misstates the evidence. 18:04:13

1 BY MR. PETROCELLI: 18:04:13

2 Q. If it wasn't crystal clear, tell me that. 18:04:15

3 I'd rather have you say that, frankly. 18:04:17

4 MS. ESKENAZI: Misstates the evidence. 18:04:20

5 BY MR. PETROCELLI: 18:04:20

6 Q. But you're the witness. 18:04:22

7 A. That was my opinion. 18:04:22

8 Q. That it was crystal clear? 18:04:23

9 A. It was clear to me. 18:04:26

10 Q. Crystal clear? 18:04:28

11 MS. ESKENAZI: Objection. 18:04:29

12 THE WITNESS: I don't know what "crystal 18:04:30

13 clear" means. 18:04:32

14 MS. ESKENAZI: Argumentative. 18:04:33

15 BY MR. PETROCELLI: 18:04:33

16 Q. Clear to you. That's the best you can do? 18:04:35

17 Clear? 18:04:37

18 A. Yes. 18:04:37

19 Q. Okay. And you were able to achieve that 18:04:38

20 clarity without doing any research on -- on -- on 18:04:40

21 how computer games are stored on servers, on discs, 18:04:44

22 on cartridges, on any of this? 18:04:48

23 MS. ESKENAZI: Objection. Misstates the 18:04:52

24 evidence. 18:04:53

25 THE WITNESS: It didn't appear to me to be 18:04:54

1 a matter for research, whether something that had no 18:04:56

2 physical component was an article of tangible 18:04:59

3 personal property. 18:05:01

4 BY MR. PETROCELLI: 18:05:01

5 Q. Have you spoken to any consultants, 18:05:14

6 computer consultants about that subject? 18:05:17

7 MS. ESKENAZI: Objection. To the extent 18:05:19

8 that that information is -- has been discussed with 18:05:20

9 counsel, that is attorney-client privileged 18:05:27

10 information. 18:05:30

11 BY MR. PETROCELLI: 18:05:30

12 Q. You can answer. 18:05:33

13 A. On that basis, I can't answer the question. 18:05:33

14 Q. What about before September 2010? Did you 18:05:37

15 ever speak to a computer consultant or anybody that 18:05:39

16 you thought was specialized in computers on the 18:05:42

17 subject of whether an online or downloadable-only 18:05:45

18 game was -- was a physical -- item of physical 18:05:48

19 property or tangible personal property or any of 18:05:55

20 those things? 18:05:57

21 MS. ESKENAZI: Objection. 18:05:58

22 BY MR. PETROCELLI: 18:05:58

23 Q. Did you ever have that kind of discussion? 18:06:00

24 MS. ESKENAZI: Objection. Vague and 18:06:01

25 ambiguous. Compound. 18:06:02

1 THE WITNESS: No, I did not. 18:06:04

2 BY MR. PETROCELLI: 18:06:04

3 Q. Okay. Go back to the Exhibit 37 that I 18:06:06

4 showed you, which you said you could not recall 18:06:08

5 anything about. 18:06:13

6 Do you have that in front of you? 18:06:15

7 A. Yeah. 18:06:17

8 Q. Take a look at Exhibit 38. 18:06:17

9 MS. ESKENAZI: What's Exhibit 38? Do I 18:06:21
10 have that? 18:06:21

11 (The document referred to was 18:06:26
12 marked for identification as 18:06:26
13 Exhibit 38 and attached to this 18:06:26
14 deposition.) 18:06:26

15 BY MR. PETROCELLI: 18:06:26

16 Q. This is an e-mail from you back to Tom 18:06:27
17 Magnani and the others dated August 5, 2004, saying: 18:06:32

18 "Dear Tom, many thanks for 18:06:39

19 consulting us about this matter. 18:06:41

20 We feel this is one that SZC, 18:06:42

21 rather than the Estate should 18:06:46

22 pursue. But if we can be of any 18:06:47

23 assistance, please let me know." 18:06:50

24 Do you see that? 18:06:53

25 A. I see that. 18:06:53

1 Q. You don't deny writing this e-mail, do you? 18:06:54

2 A. It appears to be an e-mail from me to Tom 18:07:03

3 Magnani. 18:07:06

4 Q. And when -- when you made the judgment that 18:07:06

5 this online video game is one that should be pursued 18:07:11

6 by Zaentz rather than the Estate, what research or 18:07:18

7 analysis did you do, if any, regarding the type of 18:07:24

8 game it was, whether it was an item of tangible 18:07:29

9 personal property or not? 18:07:33

10 A. Well, I still have no recollection of 18:07:37

11 this -- this e-mail or this other e-mail. 18:07:39

12 Q. But you obviously received it because you 18:07:42

13 responded and told the Estate that they should 18:07:45

14 pursue it, correct? 18:07:47

15 A. Told Zaentz. 18:07:49

16 Q. Zaentz, excuse me. Thank you. 18:07:49

17 A. I don't recall whether I did any research 18:07:53

18 of any kind at that time. 18:07:55

19 Q. But you -- you agree with me you didn't say 18:07:56

20 in here anything about what kind of game it is, what 18:07:58

21 are you doing here, is there a tangible property 18:08:01

22 involved, pointing out none of the distinctions that 18:08:04

23 you're now explaining to me in your testimony, none 18:08:09

24 of that was mentioned in this letter, correct? 18:08:12

25 A. But that's entirely -- 18:08:14

1 MS. ESKENAZI: Objection. Objection. 18:08:14

2 Document speaks for itself. 18:08:16

3 THE WITNESS: That's entirely consistent 18:08:17

4 with my view that all games were bought by way of 18:08:19

5 physical media, so I would have no reason to make 18:08:21

6 that distinction. 18:08:23

7 BY MR. PETROCELLI: 18:08:24

8 Q. Well, you never inquired, did you? 18:08:24

9 MS. ESKENAZI: Objection. 18:08:26

10 THE WITNESS: I have no reason to inquire. 18:08:26

11 BY MR. PETROCELLI: 18:08:26

12 Q. Well, you might have had reason to inquire 18:08:28

13 because you had virtually no knowledge whatsoever of 18:08:30

14 computer games. 18:08:34

15 MS. ESKENAZI: Objection. Misstates the 18:08:35

16 testimony. 18:08:36

17 BY MR. PETROCELLI: 18:08:36

18 Q. You did nothing or can remember nothing, at 18:08:37

19 least, in deriving your view of what computer games 18:08:39

20 were at the time. And given the fact that you knew 18:08:42

21 you had very little basis for your opinion, you 18:08:46

22 might have inquired. 18:08:50

23 MS. ESKENAZI: Objection. 18:08:51

24 BY MR. PETROCELLI: 18:08:51

25 Q. That's the reason why you might have 18:08:52

1 inquired. 18:08:54

2 MS. ESKENAZI: Objection. Move to strike 18:08:54

3 as argumentative. Assumes facts not in evidence. 18:08:56

4 BY MR. PETROCELLI: 18:08:56

5 Q. Well, let me ask you this: Even though you 18:08:58

6 can't recall a single thing that went into forming 18:09:00

7 your view that online games had to -- had to involve 18:09:02

8 a physical purchase, as you put it, in light of the 18:09:06

9 fact that you can't remember a single thing, are you 18:09:10

10 confident, though, that you would have done some 18:09:16

11 significant amount of research in coming to that 18:09:18

12 view at the time you formed it? 18:09:20

13 MS. ESKENAZI: Objection. Misstates the 18:09:22

14 testimony. Misleading. 18:09:23

15 THE WITNESS: Please, would you read back 18:09:27

16 the question. 18:09:45

17 (The reporter read the record 18:09:45

18 as follows: 18:09:45

19 "QUESTION: Even though you 18:08:59

20 can't recall a single thing that 18:09:00

21 went into forming your view that 18:09:01

22 online games had to involve a 18:09:04

23 physical purchase, as you put it, 18:09:06

24 in light of the fact that you 18:09:09

25 can't remember a single thing, are 18:09:10

1 you confident, though, that you 18:09:14
2 would have done some significant 18:09:17
3 amount of research in coming to 18:09:18
4 that view at the time you formed 18:09:20
5 it?") 18:09:21

6 MS. ESKENAZI: Same objections. 18:09:47

7 THE WITNESS: You said possibly in the 18:09:47
8 question before that I had no knowledge of computer 18:09:50
9 games. I don't think that was my testimony. I -- 18:09:54
10 my testimony was that I was aware that computer 18:09:56
11 games were in physical form. 18:09:58

12 BY MR. PETROCELLI: 18:09:58

13 Q. Well, it turns out you were wrong, right? 18:10:01

14 MS. ESKENAZI: No. Objection. 18:10:04
15 Argumentative. 18:10:05

16 THE WITNESS: I wasn't aware of any 18:10:07
17 computer games that could be bought otherwise than 18:10:08
18 in physical form until September, October 2010. 18:10:12

19 BY MR. PETROCELLI: 18:10:12

20 Q. But it turns out you were mistaken, that 18:10:14
21 prior to September 2010 there were many computer 18:10:16
22 games that were being sold in the -- in the 18:10:20
23 marketplace that did not require a purchase of a 18:10:22
24 physical storage or -- or disc or cartridge? 18:10:27

25 MS. ESKENAZI: Objection. 18:10:30

1 BY MR. PETROCELLI: 18:10:30

2 Q. You now know that to be true, correct? 18:10:31

3 MS. ESKENAZI: Objection. Assumes facts 18:10:33

4 not in evidence. 18:10:34

5 THE WITNESS: I'm not aware of that. 18:10:35

6 BY MR. PETROCELLI: 18:10:35

7 Q. So you -- as you're sitting here now 18:10:36

8 testifying, you believe that consistent with your 18:10:39

9 view of computer games, no such -- there were no 18:10:42

10 such things as downloadable-only games that existed 18:10:46

11 prior to September 2010? 18:10:51

12 A. Well, I recall that in September, 18:10:55

13 October 2010, I reviewed, as a result of this 18:10:58

14 matter, The Lord of the Rings Online game which 18:11:01

15 appeared to me, even at that time, to be sold by way 18:11:07

16 of physical media. 18:11:10

17 Q. That's not my question. 18:11:11

18 As you're sitting here now, have you come 18:11:12

19 to learn that prior to September 2010, there were in 18:11:15

20 the marketplace downloadable-only computer games? 18:11:22

21 MS. ESKENAZI: Objection to the extent that 18:11:27

22 it calls for attorney-client communications and 18:11:28

23 attorney work product. I'm going to instruct the 18:11:31

24 witness not to answer. 18:11:34

25 If you can answer the question outside of 18:11:35

1 that -- outside of the knowledge that you gained in 18:11:37
2 connection with communications with counsel, you're 18:11:41
3 welcome to answer. 18:11:47

4 THE WITNESS: I can't answer that question 18:11:49
5 on the basis of any independent research that I have 18:11:50
6 done. 18:11:52

7 BY MR. PETROCELLI: 18:11:53

8 Q. The truth is, you did absolutely no 18:11:53
9 diligence whatsoever in making the judgment that all 18:11:55
10 computer games had to involve a physical purchase of 18:12:02
11 a -- of a disc or a cartridge at the time you formed 18:12:05
12 that view, correct? You did no diligence in forming 18:12:07
13 that view at all. True or not true? 18:12:12

14 MS. ESKENAZI: Objection. Misstates the 18:12:14
15 testimony. Argumentative. Compound. Vague and 18:12:15
16 ambiguous. 18:12:21

17 THE WITNESS: Your question assumes that I 18:12:21
18 proactively set out to form a view, which I did not. 18:12:22

19 BY MR. PETROCELLI: 18:12:22

20 Q. The view that you held, the date of which 18:12:26
21 and the details of which you cannot recall, when you 18:12:29
22 formed that view, you performed no diligence in 18:12:32
23 order to arrive at that view, correct? 18:12:35

24 MS. ESKENAZI: Objection. Misstates the 18:12:39
25 testimony. Compound. Argumentative. Vague and 18:12:40

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1 | ambiguous. 18:12:46
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2 THE WITNESS: I don't recall forming or 18:12:46

3 arriving at a view. My testimony is that insofar as 18:12:49

4 I was aware of computer games prior to 2010, I 18:12:53

5 | understood them to be purchasable on physical media. 18:12:57

6 BY MR. PETROCELLI: 18:12:59

7 Q. And you relied on that definition and this 18:12:59

8 | viewpoint -- excuse me. 18:13:04

9 You relied on that viewpoint in dealing 18:13:04

10	with the matters that came to your attention	18:13:06
----	--	----------

11	regarding computer games and -- and under the	18:13:09
----	---	----------

12 merchandising agreement between the Estate and 18:13:13

13	Zaentz, Miramax, New Line, Warner Bros., et cetera,	18:13:17
----	---	----------

14	correct?	18:13:20
----	----------	----------

15 MS. ESKENAZI: Objection. It misstates the 18:13:20

16	testimony.	18:13:22
----	------------	----------

17 THE WITNESS: As I sit here today, I have 18:13:24

18	no recollection of any issues regarding computer	18:13:27
----	--	----------

19	games coming to my attention until September,	18:13:29
----	---	----------

20	October 2010.	18:13:34
----	---------------	----------

21 BY MR. PETROCELLI: 18:13:34

22	Q. I just showed you one.	18:13:35
----	---------------------------	----------

23	A. Of which I have no recollection.	18:13:37
----	-------------------------------------	----------

24 Q. I know, but -- 18:13:38

25 A. I'm not disputing that -- 18:13:39

1 Q. Okay. So -- but my point is that from time 18:13:40
2 to time, issues like the one I just showed you came 18:13:46
3 to your attention regarding computer games under the 18:13:48
4 Estate's license with Zaentz and others, correct? 18:13:52

5 A. Well, you've shown me this example, 18:13:57
6 correct. 18:13:57

7 Q. Okay. And in addressing those issues that 18:13:59
8 came to your attention from time to time regarding 18:14:04
9 computer games on -- under the license, you relied 18:14:06
10 on your personal view of what constituted computer 18:14:12
11 games, correct? 18:14:18

12 MS. ESKENAZI: Objection. Misstates the 18:14:19
13 testimony. 18:14:20

14 THE WITNESS: But there was no issue in 18:14:21
15 play about that. 18:14:23

16 BY MR. PETROCELLI: 18:14:23

17 Q. That's not my question. 18:14:24

18 My question is whenever you were called 18:14:25
19 upon to deal with the computer game issue under the 18:14:28
20 Zaentz license, or the Estate's license with Zaentz, 18:14:32
21 with New Line, with Warner Bros., with whoever, you 18:14:38
22 simply relied on your personal view of what 18:14:40
23 constituted a computer game, correct? 18:14:44

24 MS. ESKENAZI: Objection. Misstates the 18:14:47
25 testimony. 18:14:48

1 THE WITNESS: I don't recall doing any 18:14:50

2 research into what constituted a computer game. 18:14:52

3 BY MR. PETROCELLI: 18:14:52

4 Q. Okay. Including, for example, when you 18:14:55

5 sent back the letter that -- the e-mail that I just 18:14:57

6 showed you, which is Exhibit 38, correct? 18:14:59

7 A. I don't recall doing any research in 18:15:02

8 connection with this. 18:15:04

9 Q. And you said "research." You don't recall 18:15:05

10 doing anything; is that right? 18:15:09

11 A. I don't recall this. 18:15:11

12 Q. Did you ever review any of the license 18:15:11

13 agreements between Zaentz and any computer game 18:15:17

14 developers? 18:15:19

15 MS. ESKENAZI: Objection. Vague and 18:15:21

16 ambiguous. Assumes facts not in evidence. 18:15:22

17 THE WITNESS: Not to my recollection. 18:15:24

18 BY MR. PETROCELLI: 18:15:24

19 Q. Ever see one? 18:15:26

20 MS. ESKENAZI: Objection. Assumes facts 18:15:27

21 not in evidence. 18:15:30

22 THE WITNESS: I've seen the one that's been 18:15:30

23 produced in this litigation. 18:15:33

24 BY MR. PETROCELLI: 18:15:33

25 Q. Did you ever see one before September 2010? 18:15:36

1 A. I don't believe so. 18:15:38

2 Q. Were you ever called upon to review or look 18:15:41

3 at any of the provisions of any such agreements? 18:15:44

4 A. No, that wouldn't be consistent with the 18:15:48

5 kind of work I do. 18:15:50

6 Q. So the answer is you never were, not by 18:15:51

7 your partner, Cathleen Blackburn, or anyone else; is 18:15:54

8 that right? 18:15:54

9 A. I have no recollection as I sit here today 18:15:57

10 of ever being asked to review any such documents. 18:15:58

11 Q. Take a look at -- take a look at Exhibit 34 18:16:00

12 previously shown to you. 18:16:20

13 Do you recall receiving this document? 18:16:30

14 Mr. Ulin went over it with you. 18:16:31

15 A. I believe my testimony was that I didn't 18:16:33

16 recall this document. 18:16:37

17 Q. Do you recall -- and you see where it talks 18:16:38

18 about an online computer game in the first 18:16:39

19 paragraph. 18:16:41

20 Do you see that? 18:16:42

21 A. Yes. 18:16:48

22 Q. And you see down in the middle of the page 18:16:49

23 it references: 18:16:51

24 "MMOGs are online 3-D virtual 18:16:53

25 worlds where players connect from 18:16:56

1 their home PCs across the Internet 18:16:58

2 to interact with players from 18:17:01

3 around the world." 18:17:02

4 Do you see that? 18:17:02

5 A. Yes. 18:17:02

6 Q. Okay. You don't recall ever seeing this at 18:17:08

7 all. Is that your testimony? 18:17:17

8 A. I don't recall this document. 18:17:17

9 Q. Well, looking at it now, does it refresh 18:17:18

10 your recollection that you saw it at the time in 18:17:21

11 August of 2005? 18:17:23

12 MS. ESKENAZI: Would you like him to read 18:17:24

13 it? 18:17:25

14 MR. PETROCELLI: No, I just want him to 18:17:25

15 look at the first page. 18:17:27

16 THE WITNESS: It does not refresh my 18:17:30

17 recollection that I received this document. 18:17:32

18 BY MR. PETROCELLI: 18:17:32

19 Q. Okay. Assuming you did receive it at the 18:17:33

20 time, and with regard to the references to online 18:17:34

21 computer games that you see there on the first page 18:17:37

22 in the first paragraph and in the fourth paragraph, 18:17:40

23 do you think it would have prompted you to question 18:17:45

24 Zaentz about what constituted these games or what 18:17:48

25 comprised these games? 18:17:52

1 MS. ESKENAZI: Calls for speculation. 18:17:53

2 Lacks foundation. 18:17:55

3 THE WITNESS: I don't believe so, because I 18:17:57

4 would have no reason to think that there were not 18:17:59

5 physical media involved. 18:18:01

6 BY MR. PETROCELLI: 18:18:01

7 Q. So you would have simply relied on your -- 18:18:02

8 your personal view of what -- what computer games 18:18:06

9 were? 18:18:12

10 A. Well, there's nothing that would have put 18:18:13

11 me on inquiry. 18:18:15

12 Q. Well, who's talk- -- inquiry about what? 18:18:16

13 How about the words "online"? How about "virtual 18:18:19

14 worlds"? How about those words? 18:18:23

15 MS. ESKENAZI: Objection. It's been asked 18:18:26

16 and answered. It's also speculation -- 18:18:29

17 BY MR. PETROCELLI: 18:18:29

18 Q. So looking at it -- 18:18:29

19 MS. ESKENAZI: It's also speculation and 18:18:32

20 it's vague and ambiguous. 18:18:34

21 MR. PETROCELLI: I don't think it's 18:18:34

22 speculation. 18:18:35

23 Q. Look- -- looking at it now, you see nothing 18:18:36

24 here that would have prompted you to question 18:18:38

25 whether this involved anything other than a physical 18:18:40

1 purchase. Is that your testimony, sir? 18:18:42

2 MS. ESKENAZI: Objection. Calls for 18:18:44

3 speculation. Lacks foundation. Vague and 18:18:45

4 ambiguous. Asked and answered. 18:18:47

5 THE WITNESS: Given my state of knowledge 18:18:48

6 in 2005, that is my testimony. 18:18:50

7 BY MR. PETROCELLI: 18:18:50

8 Q. Okay. Take a look at the -- at the next 18:18:53

9 exhibit here. This is -- you were shown one of 18:18:55

10 these documents. 18:19:01

11 MS. ESKENAZI: Are you giving us an exhibit 18:19:01

12 or are we going back to something? 18:19:02

13 MR. PETROCELLI: No, we're going to go to 18:19:05

14 a -- another one. 18:19:07

15 Next is Exhibit 39, which is an e-mail 18:19:24

16 from -- an e-mail chain, the last or latest date of 18:19:31

17 which is e-mail from Cathleen to Tom Magnani copying 18:19:36

18 Mr. Maier and others dated June 7, 2007. 18:19:40

19 (The document referred to was 18:19:52

20 marked for identification as 18:19:52

21 Exhibit 39 and attached to this 18:19:52

22 deposition.) 18:19:52

23 BY MR. PETROCELLI: 18:19:52

24 Q. You testified previously about meeting with 18:20:02

25 Mr. Bendich, Mr. Magnani and others in 2007 in 18:20:05

1 Oxford -- or in London, excuse me. 18:20:11

2 A. Yes. 18:20:12

3 Q. Okay. 2005 was Oxford, I think, right? 18:20:14

4 A. I think that's right. 18:20:16

5 Q. Yeah. So look down here at the bottom of 18:20:17

6 the page, first page of Exhibit 39, where Tom is 18:20:24

7 writing to Cathleen and Steve; that's you and 18:20:30

8 others. 18:20:34

9 Do you see that? 18:20:35

10 A. Would you like me to read this document? 18:20:35

11 Q. No, I don't want you to read the whole 18:20:38

12 thing. 18:20:41

13 A. Okay. 18:20:41

14 Q. Read the first paragraph, "Dear Cathleen." 18:20:42

15 MS. ESKENAZI: Of which -- I'm sorry, 18:20:44

16 which -- 18:20:45

17 THE WITNESS: This starts, "Dear Tom." 18:20:45

18 MS. ESKENAZI: I'm confused. Where do you 18:20:46

19 want us to look? 18:20:48

20 MR. PETROCELLI: Nothing confusing about 18:20:48

21 it, okay? 18:20:50

22 MS. ESKENAZI: I'm sorry, I just don't know 18:20:50

23 where you want him to look. 18:20:51

24 MR. PETROCELLI: That's all right. The 18:20:53

25 e-mail at the bottom of page 1 of Exhibit 39 is an 18:20:54

1 e-mail from Tom Magnani to Cathleen and others. 18:20:56

2 Q. And I want you to read -- 18:21:01

3 MS. ESKENAZI: It has no text. 18:21:01

4 MR. PETROCELLI: It's on the next page. 18:21:04

5 Q. "Dear Cathleen." And if you could just 18:21:06

6 read that first paragraph. 18:21:07

7 A. I've read the first paragraph. 18:21:12

8 Q. Okay. Now, this says there in the second 18:21:14

9 sentence: 18:21:17

10 "We have been caught up in a 18:21:18

11 flurry of activity around the 18:21:20

12 launch of The Lord of the Rings 18:21:21

13 Online game and the premier of the 18:21:22

14 London production of Kevin 18:21:24

15 Wallace's musical." 18:21:26

16 With respect to the reference to The Lord 18:21:28

17 of the Rings Online game, you recall seeing this at 18:21:29

18 the time? 18:21:33

19 A. I don't recall this e-mail. 18:21:33

20 Q. Okay. Do you have any reason to believe 18:21:34

21 you didn't receive this e-mail? 18:21:36

22 A. I don't have any reason to believe I didn't 18:21:38

23 receive this e-mail. 18:21:40

24 Q. Okay. Now, if you saw a reference like 18:21:42

25 this to The Lord of the Rings Online game being 18:21:44

1 launched, do you believe that might have prompted 18:21:48
2 you to inquire about the type of game it was, what 18:21:50
3 it consisted of, anything like that? 18:21:53

4 MS. ESKENAZI: Objection. Assumes facts 18:21:58
5 not in evidence. Calls for speculation. Lacks 18:21:58
6 foundation. 18:22:01

7 THE WITNESS: No, I don't believe that 18:22:01
8 would have prompted me. 18:22:03

9 BY MR. PETROCELLI: 18:22:03

10 Q. Turn to the next page where Tom is -- in 18:22:04
11 the same e-mail is setting out a proposed agenda for 18:22:09
12 the meeting. And item number 1 is the update on 18:22:12
13 recent licensing activities. 18:22:16

14 MS. ESKENAZI: I'm sorry, where are you 18:22:18
15 again? 18:22:19

16 MR. PETROCELLI: Next page. 18:22:20

17 MS. ESKENAZI: Next page. 18:22:21

18 BY MR. PETROCELLI: 18:22:21

19 Q. Paragraph 1 of the proposed agenda: 18:22:25

20 "Update on Recent Licensing 18:22:27

21 Activities: We would like to give 18:22:29

22 you an update of SZC's most 18:22:31

23 significant licensing activities 18:22:33

24 since the last meeting, including 18:22:35

25 some joint activities with New 18:22:37

1 Line Cinema involving Electronic 18:22:40

2 Arts and games workshop, the 18:22:42

3 launch of Turbine's Lord of the 18:22:44

4 Rings Online game, et cetera." 18:22:48

5 Do you recall having a meeting in or about 18:22:52

6 June of 2007 with the Zaentz folks about the launch 18:22:56

7 of Turbine's Lord of the Rings Online game, as well 18:23:03

8 as other topics? 18:23:07

9 A. I have no recollection of a discussion 18:23:09

10 about the launch of this game. 18:23:11

11 Q. Do you believe such a meeting did not 18:23:14

12 occur? 18:23:16

13 A. I've already testified that I do recall the 18:23:17

14 two meetings that we've discussed. 18:23:20

15 Q. Okay. Can you take a look at -- did you do 18:23:29

16 any -- any investigation whatsoever into the nature 18:23:49

17 of this computer game, this Lord of the Rings Online 18:23:51

18 game? 18:23:53

19 A. I don't recall doing any investigation into 18:23:55

20 that game until September, October 2010. 18:23:58

21 Q. Okay. Certainly there was no effort by 18:24:00

22 anybody at Zaentz or Turbine to hide it from you, 18:24:03

23 right? They were telling you about it, correct? 18:24:06

24 MS. ESKENAZI: Objection. Vague and 18:24:10

25 ambiguous. 18:24:12

1 THE WITNESS: I can't add to what it says 18:24:12
2 in this document. 18:24:15

3 BY MR. PETROCELLI: 18:24:15

4 Q. What does that mean? Did I ask you that 18:24:15
5 question? 18:24:19

6 A. You asked me whether they were hiding it 18:24:22
7 and whether they were being open. 18:24:24

8 Q. Right. Would you -- would you agree with 18:24:26
9 me that the transmission of these materials to you, 18:24:27
10 the setting of a meeting to discuss them, that they 18:24:29
11 were keeping you informed about this new computer -- 18:24:31

12 A. The fact -- 18:24:31

13 Q. -- game, this new -- 18:24:37

14 A. The fact of the -- 18:24:37

15 Q. -- online game? 18:24:38

16 I'm sorry, "the fact of"? 18:24:39

17 A. The fact of the launch of the game, yes, I 18:24:40
18 would agree. 18:24:43

19 Q. And they provided you no information or 18:24:44
20 details about the game, just the fact of its launch. 18:24:45
21 Is that your testimony? 18:24:50

22 MS. ESKENAZI: Objection. It misstates the 18:24:50
23 testimony. 18:24:51

24 THE WITNESS: My testimony is that I have 18:24:52
25 no recollection about any discussion about this 18:24:54

1 game. 18:24:56

2 BY MR. PETROCELLI: 18:24:57

3 Q. You didn't answer my question. 18:24:57

4 Do you believe they with- -- they withheld 18:25:00

5 from you information about the nature of the game? 18:25:02

6 That they only told you about the fact of the launch 18:25:08

7 and nothing else? That's my question. 18:25:10

8 A. I have -- 18:25:12

9 MS. ESKENAZI: Object- -- 18:25:12

10 THE WITNESS: -- no reason to think they 18:25:12

11 withheld information. 18:25:13

12 BY MR. PETROCELLI: 18:25:13

13 Q. Look at the next exhibit. 18:25:15

14 MS. ESKENAZI: Objection. Misstates the 18:25:15

15 testimony. 18:25:16

16 MR. PETROCELLI: Look at 35, Bonnie. I 18:25:16

17 think he has it right there. That's this right 18:25:20

18 here. 18:25:20

19 MS. ESKENAZI: 35. 18:25:20

20 MR. PETROCELLI: Yeah. 18:25:20

21 Q. This is a -- 18:25:36

22 A. Right. 18:25:36

23 Q. These -- this is a set of -- well, it's a 18:25:36

24 document, a multi-page document you were shown 18:25:41

25 earlier, Exhibit 35, entitled "Overview of Prominent 18:25:43

1 Licensees, June 2007." 18:25:46

2 And if you turn to -- turn to the page 18:25:49

3 marked PLAINTIFFS004587. 18:25:56

4 Do you have that? 18:26:05

5 MS. ESKENAZI: I'm sorry, no. 18:26:06

6 THE WITNESS: No. 18:26:07

7 MR. PETROCELLI: PLAINTIFFS004587. That's 18:26:08

8 the Bates number. 18:26:11

9 MS. ESKENAZI: No. We have the -- what -- 18:26:11

10 THE WITNESS: We have a Zaentz copy. 18:26:11

11 MS. ESKENAZI: -- we were handed was -- 18:26:13

12 MR. PETROCELLI: Okay. You must have -- 18:26:13

13 MS. ESKENAZI: -- the SZC copy. 18:26:17

14 MR. PETROCELLI: You must have a different 18:26:17

15 version. 18:26:17

16 MS. ESKENAZI: Can you just -- just hold it 18:26:17

17 up for us, because we can find it if you hold it up. 18:26:19

18 It -- it looks to me like you're talking 18:26:27

19 about SZC 0033584. 18:26:32

20 MR. PETROCELLI: Okay. And what's the 18:26:35

21 title of that page? What's it say on it? 18:26:37

22 MS. ESKENAZI: "Lord of the Rings, New Line 18:26:39

23 Cinema." 18:26:42

24 MR. PETROCELLI: Perfect. 18:26:42

25 MS. ESKENAZI: Is that what you want? 18:26:43

1 MR. PETROCELLI: Yep. 18:26:45

2 MS. ESKENAZI: Okay. 18:26:45

3 BY MR. PETROCELLI: 18:26:45

4 Q. Look at the last part of that boxed 18:26:45

5 paragraph where it says -- talking about some of the 18:26:47

6 licenses: 18:26:49

7 "They include Hasbro, Mattel, 18:26:49

8 Electronic Arts, the Noble 18:26:52

9 Collection and Sideshow WETA" - - 18:26:53

10 that's all caps, semicolon, 18:26:56

11 "producing items of jewelry and 18:26:58

12 fine collectables to mobile 18:27:00

13 ringtones, swords, furniture and 18:27:03

14 board games." 18:27:08

15 Do you see that? 18:27:09

16 A. I see that. 18:27:09

17 Q. Were you aware of Zaentz having licensed 18:27:10

18 mobile ringtones? 18:27:12

19 MS. ESKENAZI: Objection. Vague and 18:27:15

20 ambiguous. Assumes facts not in evidence. 18:27:16

21 THE WITNESS: I have no recollection of 18:27:19

22 this document. 18:27:20

23 BY MR. PETROCELLI: 18:27:20

24 Q. Were you aware that you could download 18:27:22

25 ringtones onto a mobile phone prior to September 18:27:26

1 2010? 18:27:31

2 A. Yes, I was. 18:27:31

3 Q. Were you aware that the downloading of the 18:27:32

4 ringtones did not require the purchase of a storage 18:27:35

5 device for the tones; you would download them from 18:27:42

6 some computer's Web site onto a cell phone. Were 18:27:45

7 you aware of that? 18:27:50

8 MS. ESKENAZI: Objection. Compound. 18:27:51

9 Assumes facts not in evidence. 18:27:53

10 THE WITNESS: I believe I was aware of 18:27:54

11 that. I can't be certain as to the date. 18:27:56

12 BY MR. PETROCELLI: 18:27:57

13 Q. Were -- were you aware that such 18:27:57

14 downloading-only activity had been licensed by 18:28:00

15 Zaentz with respect to Lord of the Rings? 18:28:05

16 A. No, I was not. 18:28:08

17 Q. Okay. When you saw the reference to mobile 18:28:10

18 ringtones, did you inquire about it? 18:28:12

19 MS. ESKENAZI: Objection. Assumes facts 18:28:16

20 not in evidence. 18:28:17

21 THE WITNESS: As I've testified, I have no 18:28:18

22 recollection of seeing this. 18:28:20

23 BY MR. PETROCELLI: 18:28:20

24 Q. Do you have any reason to believe you did 18:28:21

25 not see it? 18:28:23

1 Do you have a copy of this? 18:28:35

2 A. If -- if, for example, this was handed out 18:28:35

3 at the end of the meeting, I may not have read it. 18:28:37

4 MR. PETROCELLI: I'm going to mark as the 18:28:42

5 next exhibit in order the version that I'm looking 18:28:43

6 at, which has been produced by plaintiffs. So that 18:28:45

7 would be 40? 18:28:50

8 THE REPORTER: Yes. 18:29:05

9 (The document referred to was 18:29:05

10 marked for identification as 18:29:05

11 Exhibit 40 and attached to this 18:29:05

12 deposition.) 18:29:13

13 BY MR. PETROCELLI: 18:29:13

14 Q. Do you have Exhibit 40? 18:29:14

15 A. Yes, I do. 18:29:15

16 Q. Okay. So it's the same document but 18:29:16

17 produced from the files of plaintiffs. 18:29:18

18 Do you know which file this came from? 18:29:20

19 A. I don't know which file it came from. 18:29:23

20 Q. Okay. So turn to -- turn to Bates number 18:29:24

21 4587. That's the page we were just looking at in -- 18:29:28

22 in the -- 18:29:32

23 A. Yeah. 18:29:33

24 Q. -- in the other copy. Okay? 18:29:34

25 And you'll see the reference to mobile 18:29:37

1 ringtones. I've asked you about that. You don't 18:29:39
2 have any reason to believe this was not shown to you 18:29:41
3 or given to you, particularly since it came from 18:29:44
4 plaintiffs' files, correct? 18:29:46

5 A. Yes. 18:29:46

6 Q. Okay. But you're telling me you don't 18:29:50
7 recall anything about it, right? 18:29:52

8 A. That's correct. 18:29:54

9 Q. Turn to page 4589, a couple pages later, 18:29:54
10 entitled "Electronic Arts." 18:30:00

11 Do you recall a discussion or seeing a 18:30:04
12 document like this with a description of the EA 18:30:06
13 games? 18:30:10

14 A. No, I don't recall it. 18:30:11

15 Q. Okay. Turn to page 4594, a few pages 18:30:15
16 later, page entitled "Turbine Entertainment 18:30:20
17 Software." 18:30:24

18 MS. ESKENAZI: I'm sorry, Dan, which page? 18:30:25

19 MR. PETROCELLI: 4594. 18:30:26

20 Q. And you see the reference here to "Lord of 18:30:31
21 the Rings Online"? 18:30:33

22 A. Yes. 18:30:37

23 Q. Did you -- do you recall having any 18:30:41
24 discussions about the nature of this game, whether 18:30:43
25 it had any physical components to it, anything like 18:30:49

1 that? 18:30:53

2 A. I don't recall any discussion of that. 18:30:53

3 Q. Okay. You're not suggesting this wasn't 18:30:56

4 provided to you, though, correct, the information 18:30:58

5 about the game? 18:31:03

6 A. I'm accepting that this document looks as 18:31:04

7 though it was provided. 18:31:07

8 Q. Okay. Now, if you continue on the next few 18:31:07

9 pages, you'll see various pages of press reports 18:31:10

10 about the game Lord of the Rings Online. 18:31:17

11 Do you see starting with "Fellowship rules 18:31:20

12 in Lord of the Rings Online" with -- starting at 18:31:22

13 Bates number 4595 of Exhibit 40? 18:31:26

14 A. I see that. 18:31:30

15 MS. ESKENAZI: I'm sorry, what page? 18:31:35

16 MR. PETROCELLI: Exhibit 40 or 41? 18:31:36

17 THE REPORTER: 40. 18:31:36

18 MR. PETROCELLI: Okay. 4595. 18:31:36

19 MS. ESKENAZI: 4595? 18:31:37

20 MR. PETROCELLI: Yeah. 18:31:39

21 Q. You'll see the MSNBC contributor Joe Hutsko 18:31:39

22 has a report about the game? 18:31:44

23 Do you recall reading any of this material 18:31:45

24 at the time it was provided to you? 18:31:47

25 A. I don't recall reading any of this 18:31:51

1 material. 18:31:54

2 Q. And it goes on for a number of pages to the 18:31:54

3 end. 18:31:57

4 Is it your testimony that you had never 18:32:00

5 heard of Lord of the Rings Online prior to September 18:32:04

6 2010? 18:32:07

7 MS. ESKENAZI: Objection. Misstates the 18:32:07

8 testimony. 18:32:09

9 THE WITNESS: I believe I had heard of Lord 18:32:11

10 of the Rings Online -- 18:32:14

11 BY MR. PETROCELLI: 18:32:14

12 Q. Okay. 18:32:14

13 A. -- prior to that date. 18:32:14

14 Q. And how do you believe you had heard about 18:32:16

15 it? 18:32:17

16 A. I don't recall. 18:32:18

17 Q. And when you heard about it, do you recall 18:32:18

18 doing anything to find out whether The Lord of the 18:32:21

19 Rings Online game involved a physical purchase of a 18:32:26

20 disc or a cartridge or other medium? 18:32:30

21 A. No, I don't recall doing that. 18:32:33

22 Q. And you don't recall discussing that with 18:32:34

23 anybody at the time you first heard about it or at 18:32:36

24 any time prior to September 2010? 18:32:39

25 A. No. 18:32:42

1 MR. PETROCELLI: Okay. Well, we got -- let 18:32:48
2 me see. I'm not going to finish, so we're going to 18:32:50
3 have to discuss resuming this at another time. We 18:32:53
4 also have some document issues. So you know what, 18:32:56
5 given that we have under 30 seconds, we'll adjourn 18:33:01
6 right now. 18:33:04

7 Same stipulation that we had on Cathleen? 18:33:06

8 MS. ESKENAZI: Which was 30 days? 18:33:09

9 MR. PETROCELLI: 30 days. 18:33:11

10 MS. ESKENAZI: That sounds fine. 18:33:11

11 MR. PETROCELLI: Okay. And we'll -- 18:33:11

12 MS. ESKENAZI: Just -- just for the record, 18:33:13
13 I disagree. I think that -- that, you know, we're 18:33:15
14 not -- we don't believe you're entitled to more 18:33:18
15 time, but I'm sure everybody understands. 18:33:20

16 MR. PETROCELLI: We -- just so the record 18:33:22
17 is clear, our position is we're not done, and I have 18:33:24
18 more documents, there are documents that have not 18:33:26
19 been turned over, which I think is clear from his 18:33:29
20 testimony. Suffice it to say, you disagree. And 18:33:31
21 we'll have to sort it out. Same stipulation. 18:33:34

22 MS. ESKENAZI: Same stipulation. 18:33:37

23 MR. ULIN: Before we close the record, we 18:33:40
24 want to join in Mr. Petrocelli's position, 18:33:42
25 especially with respect to documents that may not 18:33:44

1 have been produced that should have been. 18:33:46

2 MS. ESKENAZI: Well, except that both 18:33:48

3 Warner Bros. and Zaentz have insisted on going 18:33:50

4 forward with the depositions prior to documents 18:33:53

5 being produced and said expressly that they don't 18:33:55

6 care whether document production is complete. 18:33:58

7 Several times, in fact. 18:34:01

8 MR. ULIN: We can argue it off line, but 18:34:03

9 that's -- that's different from documents not having 18:34:06

10 been searched and produced that should have been. 18:34:09

11 THE VIDEOGRAPHER: We are off the record at 18:34:10

12 6:34 p.m., and this concludes today's testimony 18:34:12

13 given by Steve Maier. The total number of media 18:34:16

14 used was six and will be retained by Veritext Legal 18:34:19

15 Solutions. 18:34:21

16 (The following stipulation

17 was agreed to by the parties at

18 the deposition of CATHLEEN

19 BLACKBURN, taken on December 10,

20 2013:

21 "MR. PETROCELLI: The

22 transcript will be -- a copy of 19:06:22

23 the transcript will be sent to -- 19:06:24

24 to -- to you, Bonnie. 19:06:26

25 "MS. LENS: You want them to 19:06:34

1	have a copy or the original?	19:06:35
2	"MR. PETROCELLI: Original.	19:06:36
3	We get the original. The copy	19:06:36
4	will go to you.	19:06:36
5	"MS. ESKENAZI: Usually the	19:06:36
6	original --	19:06:36
7	"MR. PETROCELLI: No, the	19:06:39
8	person taking the deposition gets	19:06:39
9	the original.	19:06:40
10	"MS. ESKENAZI: No, but	19:06:42
11	that's okay. I don't care who	19:06:42
12	gets the original in today's day.	19:06:43
13	"MR. PETROCELLI: It doesn't	19:06:45
14	matter.	19:06:45
15	"THE WITNESS: Is the	19:06:46
16	original going to be different	19:06:46
17	from the copy?	19:06:47
18	"MR. PETROCELLI: It is not.	19:06:48
19	And they're both going to be --	19:06:49
20	they're both going to be in	19:06:50
21	English, too.	19:06:50
22	"THE WITNESS: That's a	19:06:50
23	relief.	19:06:50
24	"MR. PETROCELLI: Okay. In	19:06:54
25	any event, the witness can have,	19:06:55

1 what, 30 days -- 19:07:00

2 "MS. ESKENAZI: 30 days. 19:07:01

3 Fine. 19:07:01

4 "MR. PETROCELLI: -- to 19:07:02

5 review it and let us know if there 19:07:02

6 are any changes or corrections. 19:07:04

7 Admonishing you, of course, if you 19:07:07

8 do make any corrections to the 19:07:08

9 transcript, that it can bear on 19:07:09

10 your credibility. 19:07:11

11 "If we don't get word of any 19:07:12

12 changes, the transcript can be 19:07:14

13 used in the form transcribed and 19:07:15

14 the court reporter is otherwise 19:07:17

15 relieved of her duties under the 19:07:18

16 rules. So stipulated? 19:07:21

17 "MS. ESKENAZI: So 19:07:24

18 stipulated. 19:07:24

19 "MR. ULIN: So stipulated.") 19:07:26

20 (Deposition concluded at 6:34 p.m.)

21

22

23

24

25

DECLARATION

I hereby declare I am the deponent in the within matter; that I have read the foregoing deposition and know the contents thereof, and I declare that the same is true of my knowledge except as to the matters which are therein stated upon my information or belief, and as to those matters, I believe it to be true.

I declare under the penalties of perjury of the State of California that the foregoing is true and correct.

Executed on the _____ day of _____ 2014, at _____, California.

STEVEN ANDREW MAIER

1 STATE OF CALIFORNIA)
) ss.

2 COUNTY OF LOS ANGELES)
3

4 I, Shanda Gabriel, Certified Shorthand
5 Reporter, Certificate No. 10094, for the State of
6 California, hereby certify:

7 I am the deposition officer that
8 stenographically recorded the testimony in the
9 foregoing deposition;

10 Prior to being examined the witness was by
11 me first duly sworn;

12 The foregoing transcript is a true record
13 of the testimony given.

14 Before completion of the deposition,
15 review of the transcript [X] was [] was not
16 requested. If requested, any changes made by the
17 deponent (and provided to the reporter) during the
18 period allowed are appended hereto.

19
20 Dated: 1/13/2014.
21

22 
23

24 Shanda Gabriel

25 CSR No. 10094

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EXHIBIT D

THIS EXHIBIT HAS BEEN
DESIGNATED
CONFIDENTIAL
AND IS FILED
SEPARATELY UNDER SEAL
PURSUANT TO
PROTECTIVE ORDER

EXHIBIT E



Julia R. Haye
D: 310.201.7432
F: 310.201.2370
JHaye@GreenbergGlusker.com
File Number: 84971-00003

January 30, 2014

Via E-Mail and U.S. Mail

Molly M. Lens
O'Melveny & Myers LLP
1999 Avenue of the Stars
Los Angeles, CA 90067

John C. Ulin
Arnold & Porter LLP
7th Floor
Three Embarcadero Center
San Francisco CA 94111-4024

Re: *Fourth Age Limited, et al. v. Warner Bros. Digital Distribution, Inc., et al.* (Case No. CV 12-09912 ABC (SHx))

Dear Molly and John:

In anticipation of this afternoon's meet and confer conference, I write to address the issues raised in Molly's January 7, 2014 letter to Rachel Valadez regarding various discovery issues and Warner's improperly filed Motion to Compel Documents and Privilege Log (the "Motion").

We believe this resolves all of the issues raised in the Motion, rendering the Motion moot. This is precisely the reason that Warner should have waited to file its Motion after today's meet and confer was concluded (a delay of only two days). That is, indeed, the purpose of the meet and confer requirement and joint stipulation process—to resolve as many issues as possible before burdening the Court, and to only seek the Court's intervention when the parties have reached an impasse.

In any event, we believe all of the issues raised in the Motion have been addressed and resolved below. The Motion should be withdrawn.

We also address other issues you have raised, below.

A. Ms. Blackburn and Mr. Maier's Files; Prior Law Firm Files

Your letter misconstrues the Tolkien Parties' efforts to collect, review and produce Ms. Blackburn's and Mr. Maier's hard copy and electronic files. Contrary to your accusations, the

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Tolkien Parties are not avoiding their obligations to collect and produce documents for Ms. Blackburn or Mr. Maier.

First, the Tolkien Parties have no objection to producing Ms. Blackburn's and Mr. Maier's electronic files from MaierBlackburn LLP, and we are already in the process of collecting, reviewing and producing these files. As previously explained during earlier meet and confer discussions, it was our understanding that under the "print to file" policy utilized at MaierBlackburn, all relevant documents had been printed and filed in hard copy format. The hard copy documents were then collected and reviewed, and non-privileged, responsive documents were produced. Although we believe that the MaierBlackburn electronic files will be entirely duplicative of the hard copy documents previously produced, to assuage your concerns, and in an abundance of caution, we elected to collect, review and produce electronic files for Ms. Blackburn and Ms. Maier from MaierBlackburn. This is in process currently.

Second, the Tolkien Parties have made diligent efforts to collect Ms. Blackburn's and Mr. Maier's electronic files from Manches. As Mr. Maier previously explained, available electronic information relating to "active matters," including matters relating to the Tolkien Estate, was transferred from Manches to MaierBlackburn when Ms. Blackburn and Mr. Maier left Manches. To the extent responsive Manches electronic files were transferred to MaierBlackburn (and we believe they were), those files will be included in our collection and review of Ms. Blackburn's and Mr. Maier's MaierBlackburn electronic files.

As for any electronic files remaining at Manches, the Tolkien Parties have made diligent efforts to collect such electronic files as well. Beginning in September, we contacted Manches to ascertain the accessibility of Tolkien electronic files and to arrange for their collection. Over the past four months, we have exchanged numerous communications with Manches regarding the accessibility of Tolkien electronic files. However, it is our understanding that Manches has been in administration (the equivalent, we understand, of an insolvency proceeding) and, consequently, Manches has been preoccupied with its own difficulties. For these reasons, representatives of Manches have been extremely slow to respond despite our repeated follow-up communications. It is our further understanding that Manches is now coming out of that proceeding and has been acquired by or merged with another firm. After our repeated attempts to obtain information regarding Tolkien electronic files, on December 30, 2013, we were informed for the first time that the Tolkien electronic files are stored, and are only available, on backup tapes. Given the cost, expense and difficulty that will be incurred in any attempt to restore numerous backup tapes, particularly given that they are likely duplicative of the tens of thousands of pages of hard copy documents previously produced from the Manches files, Manches electronic files (to the extent responsive and not transferred) are not reasonably accessible. Accordingly, our position is that the Tolkien Parties do not have an obligation to incur the cost and expense of retrieving this inaccessible data. However, we look forward to discussing this further with you this afternoon. We also note that Manches (now Penningtons

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Manches, we believe), of course, is a third party, and Warner has the option to subpoena documents directly from them.

Warner also raises a concern regarding electronic files for Dick Williamson. We have confirmed that there are no email files for Mr. Williamson. Morrell Peel & Gamlen ("MPG") did not have an email system, and the attorneys did not begin using email until MPG merged with Manches in 1997. This coincides with Mr. Williamson's retirement.

Fourth, Warner questions our collection of Greenberg Glusker electronic files. With respect to Greenberg Glusker electronic files, we have collected and produced non-privileged, responsive documents for the following custodians you list: Bonnie Eskenazi, Elisabeth Moriarty, Aaron Moss, Ricardo Cestero, Candace Carlo, and Rachel Valadez.

Given Warner's and Zaentz's insistence that plaintiffs collect documents from Manches, we fully expect that Warner and Zaentz have also collected hard copy and electronic files from all prior firms who possess relevant information including: Munger Tolles & Olson LLP; Howard Rice; Kegan, Kegan & Berkman (Kegan & Kegan Ltd.); Arent Fox LLP; and Slaff, Mosk & Rudman; Burnstein & Walker; and Bendich & Burnstein, among others. Please confirm that you have done so.

Finally, your characterization of our collection of Mr. Maier's and Mr. Blackburn's hard copy files is entirely inaccurate. We did not simply select files to review from an index (not that this would be inappropriate). Rather, Ms. Blackburn and Mr. Maier sent all Tolkien film, merchandising and trademark related files to Greenberg Glusker for review. (These documents also included hard copy files from Manches, custody of which was transferred to MaierBlackburn). We reviewed these voluminous documents, and produced responsive, non-privileged documents. In addition, Mr. Maier and Ms. Blackburn sent us an index of all Manches/MaierBlackburn Tolkien files. Greenberg Glusker chose any and all additional files we believed could be even remotely relevant to the matters at issue in this case, to cross-check against the files provided. Those additional files were also provided to Greenberg Glusker for review and production. Your argument that our collection was somehow insufficient simply because no Greenberg Glusker attorney traveled to London to examine files onsite, or at the storage facility, is unfounded. Nor does the case law you provided support such a position. We are confident that our collection of hard copy files is complete.

B. Document Preservation Notices

Once again, Warner's professed "grave concerns" regarding whether documents have been adequately preserved are unfounded. A document preservation notice was issued to the Tolkien Parties by Greenberg Glusker in connection with the profit participation action on February 21, 2008; given the manner in which the current dispute arose, this notice continued through to the present litigation. Additionally, in an abundance of caution, the Tolkien Parties

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were issued a second document preservation notice in this action on January 11, 2012; the HC Parties were issued a document preservation notice on January 14, 2012.

Given that you have insisted that the Tolkien/HC parties provide information regarding the document preservation notices issued to the Tolkien/HC parties, we request that all defendants similarly confirm which entity or individuals have been issued document preservation notices and the date(s) of any such notice(s).

C. Mr. Maier's and Mr. Blackburn's Depositions

Warner's request for a second day of deposition for both Mr. Maier and Ms. Blackburn is wholly unwarranted. Warner wasted significant time at both Mr. Maier's and Ms. Blackburn's depositions, covering the same ground Mr. Ulin had already investigated in the first half of the deposition, addressing irrelevancies and wasting time on argumentative questions and colloquy. Particularly given Mr. Maier's minimal level of involvement with respect to the issues in dispute, we will not make Mr. Maier available for an additional day of deposition.

With respect to Ms. Blackburn, provided that the parties are able to reach agreement that designation of counsel in response to a 30(b)(6) deposition notice will not be deemed a waiver of the attorney-client privilege or attorney work product doctrine, defendants will likely have an opportunity to further depose Ms. Blackburn for an additional day. Accordingly, and solely as a matter of compromise, we would be willing to provide Ms. Blackburn for an additional ½ day of deposition as a percipient witness, provided that defendants agree: (1) not to seek additional time for the deposition of Mr. Maier; (2) not to seek additional time for Ms. Blackburn beyond the additional ½ day; and (3) the additional percipient witness deposition take place at least two weeks prior to the 30(b)(6) deposition. Assuming this is acceptable, we propose scheduling Ms. Blackburn's additional ½ day of percipient deposition testimony while all of the parties are in England. Ms. Blackburn is available for further deposition on Sunday, February 23, 2014. Please let us know if you are agreeable to the date and location of the continued deposition and the conditions set forth above.

D. Custodian Metadata

We are perplexed by Warner's inflammatory description of the "custodian" information provided by plaintiffs as "a transparent attempt to obscure which custodian had which documents and/or otherwise mask the incompleteness of your production." As you are undoubtedly aware, plaintiffs have provided custodian information in a similar manner to Zaentz. Indeed, the vast majority of Zaentz electronic files have either no custodian information whatsoever or list "SZC" as the custodian. Given that plaintiffs have interpreted the parties' agreement to provide "custodian" information in the exact manner as Warner's co-defendant, clearly such a position is reasonable and was understood to be sufficient. Notwithstanding that plaintiffs believe the custodian information provided is sufficient, if all parties agree to provide "custodian"

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information which identifies the names of the individual custodians of the electronic files, plaintiffs will do the same.

With respect to hard copy files, we are confused by the request in Warner's Motion for hard copy "metadata." As we understand the term, there is no metadata associated with hard copy documents. And, Warner did not provide custodian data for many hard copy documents; Zaentz, for its part, listed the custodian of all hard copy documents as "SZC," consistent with what plaintiffs have done. Please explain precisely what you are proposing with respect to hard copy documents so that we can further discuss a proposal which will be applicable to all parties.

E. HarperCollins Documents

We disagree with your characterization of our collection efforts and our meet and confer discussions with respect to HarperCollins. We have collected, reviewed and/or produced all responsive HarperCollins documents that plaintiffs agreed to produce in response to Warner's and Zaentz's requests. Regarding HarperCollins' hard copy documents, as we have repeatedly explained, HarperCollins does not maintain these documents by custodian; they are instead stored in central files. This applies to both former and current employees. All relevant files have been collected, reviewed and/or produced in accordance with our meet and confer agreements. As to David Brawn, Simon Dowson-Collins, Jane Johnson and Chris Smith, we have collected their accessible, relevant ESI and our review and production of these documents is nearly complete. The ESI of former employees Mary Butler (left in 1995), Adrian Laing (left 2001), Adrian Bourne (left 2002), David Daley (left 2009), David Marshall (left 2003), Peter Winslow (left 1994) and David Young (left 2003) is stored on inaccessible, unindexed back-up tapes. We do not understand your reference to loose Word, PDF, and Excel files. Please clarify. However, if you are referring to network shared files, we did collect such accessible, relevant documents, and produced responsive, non-privileged documents.

As to your January 3rd letter regarding the search terms we have employed in connection with HarperCollins ESI, our use of search terms has been broader than as indicated in your letter. Although we initially tested a broad set of terms narrowed by a secondary set of more specific terms, we were concerned that the results might be too narrow. Thus, we ultimately conducted the search using a broad, core set of key terms – FOTR, Fellowship of the Ring, Hobbit, LOTR, Lord of the Rings, ROTK, Return of the King, TTT, The Two Towers and Tolkien (with expanders) – and then put eyes on every page in conducting our review. Accordingly, the search we conducted is actually broader than the additional search terms you propose.

The additional terms you have requested us to use (excluding the term "Microsoft") pull in approximately 1% of all the ESI collected. We are willing to apply those terms to the collected data and review any additional documents that have not previously been reviewed, provided that Warner confirms that it has also applied its list of new search terms against its ESI

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and will similarly agree to review and produce any additional documents. However, the term “Microsoft” hits on virtually every single document, as it appears to be pulling documents associated with underlying Microsoft software, and so we cannot agree to use that term in our searches.

F. Assertion of Privilege/Privilege Log

Once again, we disagree with your contention that communications between Ms. Blackburn and/or Mr. Maier and their clients were made in a non-legal capacity. Likewise, we disagree with your contention that plaintiffs have improperly withheld communications between Tolkien/HC based on a common interest privilege, or communications between the Tolkien Estate and Zaentz based on a common interest and/or joint client privilege. We have already provided authority supporting our assertion of the common interest and joint client privilege. If you believe you have any authority to support your position, please provide it to us immediately.

Moreover, we have as many, if not more, questions regarding the privilege assertions made by defendants. For example, Warner has made numerous unfounded privilege assertions, including with respect to Ben Zinkin and David Imhoff communications. Similarly, during the deposition of Laurie Battle, Zaentz asserted for the very first time that all communications between Ms. Battle and/or any employee of Zaentz and Al Bendich are purportedly privileged based on the new founded assertion that Al Bendich was acting as general counsel. Zaentz clawed back numerous documents at the deposition based on this new privilege assertion — we believe inappropriately. This will be the subject of a further meet and confer shortly. In addition, Warner and Zaentz appear to have improperly redacted numerous relevant documents, including documents exchanged among them long before this dispute arose.

While we believe that preparing a privilege log will be incredibly burdensome and time-consuming (a position with which all parties agreed at the early meeting), we are prepared to do so, as long as the agreement to provide privilege logs is reciprocal and all defendants agree to do the same.

G. Engagement Letter

We believe that you have misunderstood Mr. Maier’s deposition testimony. We have again confirmed that there are no engagement letters prior to 2012. Mr. Maier was not the partner responsible for the Tolkien Estate and may have been making an assumption based on what became an established practice. Indeed, it is clear from the continuation of his deposition testimony that he was simply discussing general Manches policies:

Q. You're sure? Are you speculating now or are you sure?

A. It was Manches’ practice to have an engagement letter.

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Q. That doesn't respond to my question, okay? Do you know for a fact whether there was an engagement letter?

A. No.

Tr. 199:1-8.

Regarding Mr. Blackburn's 2012 engagement letter, we stand by our position that the letter is privileged and wholly irrelevant to this dispute, and will not agree to produce it.

H. Simon Dowson-Collins Depositions and Karly Last Files

Defendants have already requested/noticed ten depositions. Plaintiffs will not consent to an eleventh deposition. Accordingly, we will not make Mr. Dowson-Collins available for deposition.

Regarding Ms. Last's files, it is our understanding that Ms. Last only began working on Tolkien matters in connection with this litigation, and that she has had no involvement in the underlying issues in dispute. Additionally, she is an attorney, and so the majority, if not all, of her communications will be privileged. For these reasons, we have not collected Ms. Last's files, nor do we believe it is necessary to do so. Nonetheless, we are confirming that Ms. Last has no files related to the underlying issues in dispute.

I. Documents for Tolkien Heirs

Your assumption that Michael Tolkien and Steven Maier were not included on our list of custodians is incorrect. As explained above, Mr. Maier's hard copy and electronic files have been, and are being collected. Regarding the Tolkien Heirs, to avoid any confusion, below is a summary of the status of our collection and production of hard copy and electronic files for each of the Tolkien heirs:

1. Christopher Tolkien and Baillie Tolkien: We have collected, reviewed and produced non-privileged, responsive hard copy and electronic files for Christopher Tolkien and Baillie Tolkien.

2. Priscilla Tolkien: We have collected, reviewed and produced non-privileged, responsive hard copy documents for Priscilla Tolkien. Ms. Tolkien does not use, and has not used, email or a computer.

3. Michael Tolkien: We have collected, reviewed and produced some of the hard copy documents for Michael Tolkien. We are in the process of collecting and reviewing additional hard copy documents and electronic documents.

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4. Simon Tolkien: We have collected, reviewed and produced some of the hard copy documents for Simon Tolkien. We are in the process of collecting and reviewing additional hard copy documents and electronic documents.

J. Jeremy Nussbaum Files

As previously explained, Mr. Nussbaum's files were collected by the Tolkien/HC Parties' prior counsel in connection with the prior litigation. We obtained those files from prior counsel and are in the process of reviewing and producing non-privileged, responsive documents. While we have no personal knowledge of when Mr. Nussbaum passed away, based on online research, it is our understanding that Mr. Nussbaum passed away on June 12, 2012. We are unclear as to what additional information you are seeking with respect to Mr. Nussbaum's files, or why any further information is relevant. Please provide a further explanation.

In sum, the Tolkien/HC Parties are diligently working to complete their document collection and production. It is obvious from Warner's recent document productions on the eve of critical depositions that it too is continuing to gather and produce additional documents and has not completed its production.

Rather than waste time and resources posturing and filing premature (and now moot) motions, we urge Warner and Zaentz to focus their attentions on completing discovery and moving the case towards trial. That is the approach we intend to take.

In any event, please confirm that Warner will withdraw its Motion. We look forward to speaking to you this afternoon.

Sincerely,

A handwritten signature in blue ink, appearing to read "Julia R. Haye".

Julia R. Haye

JRH/rm

cc: Sean M. Callagy
Martin R. Glick
Robert D. Hallman
Victor Jih
Daniel Petrocelli
Nikolas A. Primack

EXHIBIT F

Massing, Robert

From: Lens, Molly <mlens@omm.com>
Sent: Tuesday, October 01, 2013 1:22 PM
To: Cestero, Ricardo
Cc: Eskenazi, Bonnie; Moriarty, Elisabeth; Valadez, Rachel; Ulin, John C. (John.Ulin@APORTER.COM); Hallman, Robert D. (Robert.Hallman@aporter.com); Callagy, Sean M. (Sean.Callagy@aporter.com); Petrocelli, Daniel; Jih, Victor; Primack, Nikolas A.
Subject: Fourth Age Ltd.

Ricardo –

Pursuant to our conversation last week and the parties' ongoing meet-and-confer efforts, in an effort to avoid motion practice, Warner confirms its willingness to withdraw its pending deposition notices and replace them with amended notices for dates in the first half of December. Please note that Warner's willingness to do so is expressly contingent on its ability to depose Cathleen Blackburn and Steven Maier by the middle of December and before any Warner witnesses are deposed.

As discussed last week, Warner disagrees that Ms. Tolkien's deposition should move forward on October 9, 2013 and, accordingly, based in part on your recent disclosures that Ms. Butler will appear for a deposition in London and that you do not represent Mr. Laing, Warner hereby withdraws the deposition notice for October 9. Warner continues to believe that the London depositions should be consolidated as a matter of efficiency. Furthermore, we object to your mandate, on one hand, that depositions cannot proceed without the completion of document discovery with your insistence, on the other hand, that Ms. Tolkien's deposition should move forward months before any other witnesses are "allowed" to be deposed. In light of your confirmation that you have yet to make travel arrangements, we understand that any inconvenience on your end is minimal and far outweighed by the inefficiencies of repeat trips to London.

Warner will serve amended deposition notices for the depositions of Ms. Blackburn, Ms. Tolkien, Mr. Maier, and Mr. Brawn (as well as notices for Ms. Butler and Mr. Benjamin) after we have agreement on specific dates, assuming those dates are reasonably forthcoming. (We assume that you prefer this to service of amended notices now but please let us know if we are mistaken and you insist on formal amended notices now).

For the avoidance of doubt, Warner continues to disagree that you are entitled unilaterally to delay the commencement of depositions based on your unfounded position that all the parties' document productions must be completed first and has agreed to the above to avoid burdening the Court with your application for a protective order. However, in the (albeit seemingly unlikely) event that any party's document production remains substantially incomplete at the end of November, it is Warner's position that depositions must nonetheless proceed at that time.

In light of the above, please confirm that you are formally withdrawing your portion of the prematurely served (and procedurally flawed) joint stipulation and provide dates for Ms. Blackburn and Mr. Maier in early December as well as dates for Ms. Tolkien, Mr. Brawn, Mr. Benjamin, and Ms. Butler. We are in the process of identifying dates for Mr. Imhoff's and Mr. Zinkin's depositions consistent with the schedule discussed above.

Thanks,

Molly

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EXHIBIT G

Massing, Robert

From: Lens, Molly <mlens@omm.com>
Sent: Monday, July 29, 2013 5:37 PM
To: Cestero, Ricardo
Cc: Jih, Victor; Petrocelli, Daniel; Primack, Nikolas A.; Callagy, Sean M.; Glick, Martin R.; Valadez, Rachel; Moriarty, Elisabeth; Eskenazi, Bonnie; Hallman, Robert D.; Ulin, John C.
Subject: RE: Fourth Age Limited, et al. v. Warner Bros. Digital Distribution, et al.

Ricardo -

We have never agreed to your mandate that all document productions must be completed before depositions can commence. As you are aware, the Federal Rules expressly contemplate that depositions can commence following the Rule 26(f) conference, which happened months ago, and that the discovery vehicles may be used in any sequence. At this point, we have no objection to your not scheduling any of Warner's witnesses until the parties have completed their document productions, but you cannot unilaterally refuse to produce your witnesses for depositions. To the extent that you continue to insist on this condition, we will simply start noticing the depositions rather than waste our time trying to negotiate convenient dates. Separately, your accusation that we are attempting to negotiate a schedule under which we depose your witnesses before Warner's or Zaentz's is flatly contradicted by the record. You have requested dates for only two Warner witnesses, and we suggested dates along the same time frame that you have for your witness (and, indeed, even offered July dates for Mr. Zinkin). To the extent that there are additional Warner witnesses that you would like to calendar, please let us know so that we can inquire about their availability.

As stated in my June 21 email, Mr. Zinkin is available to be deposed in Los Angeles. Please let me know whether you would like to depose him in Los Angeles on October 17 and, if so, I will confirm that he remains available on that date. As to Mr. Imhoff, we are working to confirm the location for his deposition and should have an update for you later this week. Once we know where Mr. Imhoff will be deposed, we can discuss the specific date.

We will respond separately to your proposal about Mr. Maier and Ms. Blackburn. In the meantime, we need dates for Mr. Bernstein, Mr. Benjamin, Ms. Butler, and Mr. Lang, as well the location for the latter two deponents.

Thanks,

Molly

Molly M. Lens
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1999 Avenue of the Stars
Los Angeles, CA 90067
Phone: (310) 246-8593
Fax: (310) 246-6779
mlens@omm.com

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From: Cestero, Ricardo [mailto:rcester@greenbergglusker.com]
Sent: Friday, July 26, 2013 6:25 PM
To: Lens, Molly

Cc: Jih, Victor; Petrocelli, Daniel; Primack, Nikolas A.; Callagy, Sean M.; Glick, Martin R.; Valadez, Rachel; Moriarty, Elisabeth; Eskenazi, Bonnie; Hallman, Robert D.; Ulin, John C.

Subject: RE: Fourth Age Limited, et al. v. Warner Bros. Digital Distribution, et al.

Molly & John-

Let me begin by again making clear that any deposition schedule we agree to must be contingent upon the parties completing all outstanding document production by early September. We do not intend to proceed with depositions until we have had the opportunity to review and analyze the documents produced by all parties. Given that Warner has yet to make any significant headway in its production, I highly doubt that depositions can begin in September. Having said that, I will address the outstanding requests the best that I can.

In addition, it is readily apparent that your collective strategy is to try and arrange it so that you take all of our witnesses before any of your witnesses are deposed. We do not intend to allow that to happen. We will arrange a schedule that makes sense for the witnesses and the lawyers.

Blackburn and Maier: As I said, they are not available the week of September 16, 2013. And, even if they were, I cannot imagine that the document production would be completed by that time, which would mean the depositions would have to be rescheduled. I repeat my suggestion that you propose dates in October on which you wish to take their depositions and I will see if those dates are clear. As for the length of those depositions, we do not believe Mr. Maier's deposition will require more than one day, and are therefore not inclined to agree to additional time for him. With respect to Ms. Blackburn, we would be open to considering an extension of her deposition to two days on the following conditions. First, we would request two days with Al Bendich. Second, we would request an agreement that all parties question Ms. Blackburn both individually and in her capacity as a representative of the Plaintiff entities such that the defendants would not seek an additional deposition of the Plaintiff entities under Rule 30(b)(6).

Zinkin and Imhoff: Since it appears these depositions will both need to be in NY, I would suggest that we schedule them during the same week. I would propose Zinkin on October 17 and Imhoff on October 15, 2013. Please advise if that is acceptable.

Priscilla Tolkien: While I understand your desire to make only one trip to England, we should take the opportunity to fix a date for this deposition so schedules can be set. Please advise which of the two dates you would prefer. Since we do not control Mr. Williamson, we should not hold off on scheduling Mrs. Tolkien for the possibility that we may be able to coordinate Mr. Williamson's deposition.

Bernstein and Benjamin: As I think I told you, Alan Benjamin is located in Florida and his deposition will need to take place there. Bill Bernstein is in Los Angeles. We have reached out them, but haven't heard back. I will let you know their availability when I hear.

Butler and Liang: These two witnesses are no longer employed by HarperCollins. We are in the process of reaching out to them and will let you know once we have available dates. I suspect, however, that their depositions will likely take place in London.

Regards,

Ricardo

From: Lens, Molly [<mailto:mlens@omm.com>]

Sent: Thursday, July 25, 2013 4:52 PM

To: Cestero, Ricardo

Cc: Jih, Victor; Petrocelli, Daniel; Primack, Nikolas A.; Callagy, Sean M.; Glick, Martin R.; Valadez, Rachel; Moriarty,

Elisabeth; Eskenazi, Bonnie; Hallman, Robert D.; Ulin, John C.

Subject: RE: Fourth Age Limited, et al. v. Warner Bros. Digital Distribution, et al.

Ricardo -

It appears that David Imhoff's deposition will need to occur in New York, though I am working to confirm this. Given that Mr. Imhoff currently has fairly good availability in October, I suggest that you propose several dates in October that would work on your end, and I will see if any of them work with both his and our calendars.

Otherwise, I ask again that you provide us with the information requested in ours and Zaentz's emails below. Given your purported concern about the pace of discovery, we find your delay perplexing.

Thanks,

Molly

Molly M. Lens
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1999 Avenue of the Stars
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mlens@omm.com

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From: Lens, Molly
Sent: Monday, July 22, 2013 1:40 PM
To: Cestero, Ricardo
Cc: Jih, Victor; Petrocelli, Daniel; Primack, Nikolas A.; Callagy, Sean M.; Glick, Martin R.; Valadez, Rachel; Moriarty, Elisabeth; Eskenazi, Bonnie; Hallman, Robert D.; Ulin, John C.
Subject: RE: Fourth Age Limited, et al. v. Warner Bros. Digital Distribution, et al.

Ricardo -

We are writing in a further attempt to advance the scheduling of depositions.

Blackburn and Maier: We join Zaentz's request that you reconsider your decision to withdraw the week of September 16 for these depositions. Is it your position that neither one of them has any availability this week?

Brawn: We join Zaentz's request that you confirm Mr. Brawn's deposition on August 30 in Los Angeles.

Depositions in England: Provided that we can schedule Mr. Williamson this same week, we are prepared to depose Ms. Tolkien on one of the proffered dates. As we need to schedule all the English deponents during one week, we repeat our request that you confirm whether Ms. Butler and Mr. Lang are willing to travel to Los Angeles for their depositions. Because their availability impacts our ability to schedule other depositions, we must insist that you provide us an answer this week.

Bernstein and Benjamin: Like Zaentz, we repeat our earlier requests that you confirm where these depositions will take place and give us a sense of each witnesses' availability.

Bendich: Warner is available on October 23, 24 and 25. We can consider the dates proffered on the weekends if none of these dates work on your end.

Warner's Depositions: Mr. Zinkin continues to be available on October 10 and 17, though the earlier date may no longer work if depositions occur in England that week. He is also available on October 23, 24, 30, and 31. We expect to be able to confirm the location of Mr. Imhoff's deposition and provide suggested dates later this week.

Thanks,

Molly

Molly M. Lens
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Los Angeles, CA 90067
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mlens@omm.com

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From: Lens, Molly
Sent: Wednesday, July 17, 2013 10:08 AM
To: Ulin, John C.; Cestero, Ricardo
Cc: Jih, Victor; Petrocelli, Daniel; Primack, Nikolas A.; Callagy, Sean M.; Glick, Martin R.; Valadez, Rachel; Moriarty, Elisabeth; Eskenazi, Bonnie; Hallman, Robert D.
Subject: RE: Fourth Age Limited, et al. v. Warner Bros. Digital Distribution, et al.

Ricardo -

We agree with Zaentz that your July 15 email is misleading and inaccurate in many respects. As we told you before you sent your email, we are aiming to respond to your firm's July 9 letter later this week and similarly hope to be able to confirm the deposition dates proposed by Zaentz shortly.

Molly

Molly M. Lens
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Los Angeles, CA 90067
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Fax: (310) 246-6779
mlens@omm.com

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From: Ulin, John C. [<mailto:John.Ulin@APORTER.COM>]

Sent: Wednesday, July 17, 2013 7:17 AM

To: Cestero, Ricardo; Lens, Molly

Cc: Jih, Victor; Petrocelli, Daniel; Primack, Nikolas A.; Callagy, Sean M.; Glick, Martin R.; Valadez, Rachel; Moriarty, Elisabeth; Eskenazi, Bonnie; Hallman, Robert D.

Subject: RE: Fourth Age Limited, et al. v. Warner Bros. Digital Distribution, et al.

Ricardo,

We, too, are concerned about the status of discovery, and welcome the opportunity to establish a schedule. Your description of the status of written discovery and document production is misleading in several respects, which are discussed below. You should know, however, that we are preparing a response to your letter of July 9, which we expect to send within the next few days. With respect to depositions, we need to confirm dates for your witnesses. While you have offered dates for some of them, we have been waiting for your responses to our inquiries about others for weeks now and, with September fast approaching, it is critical that we set firm dates.

Depositions:

Blackburn and Maier: You had previously offered Cathleen Blackburn and Steven Maier for deposition beginning the week of September 9. SZC had been planning around that offer and we strongly prefer to set their depositions for the week of September 16. In your note, you do not indicate why these witnesses are no longer available during the weeks of September 9 and 16. Pending input on the availability of Warner's counsel, we ask that you reconsider the week of the 16th and agree to get their depositions set that week. As I raised with you last month, we also need to know now whether you will agree to two days of deposition for these two critical witnesses. Based on their involvement in the core issues of the case, the number of documents they sent and received, and the divergence in topics of importance to SZC and Warner with respect to both Ms. Blackburn and Mr. Maier, we think this is a very reasonable request, but if you disagree we need to know right away, so that we can seek relief from the Court.

Brawn: Can we confirm August 30 (a date you have offered) for David Brawn's deposition? (Once again, assuming Warner's counsel can confirm that the date works.)

Depositions in England: SZC is prepared to accept your offer to produce Priscilla Tolkien for deposition on October 9 or 10. We can proceed either day, but we need to set a full schedule for depositions in England that week, so that the parties can minimize their travel costs and make efficient use of what we hope will be a single trip to the UK. Based on your representation that the Estate does not represent or control Dick Williamson, we are attempting to reach out to him to secure a date for his deposition during the week of October 7. If he is not available then, we may ask to move Ms. Tolkien's deposition, but we believe it makes sense to confirm a date with her while one is being offered. We are still waiting on your input about whether Adrian Laing and Mary Butler will travel to Los Angeles for depositions. If they will not, then they, too, need to be deposed during that same trip to London, preferably in the same week as Priscilla Tolkien. You indicated last month that you would get us an answer, which we need now.

Bernstein and Benjamin: You have indicated that you represent Alan Benjamin and Bill Bernstein and will produce them for deposition. You told us that one of them is in Florida and that you did not know where the other was located. We asked you last month to confirm when and where these witnesses will be produced for deposition, which you said you would do. We are still waiting for your response and also need to get these depositions scheduled.

SZC Depositions: You have asked us for available deposition dates for Al Bendich and Laurie Battle. Mr. Bendich is currently available on September 30, October 1, 20 and 23-27. We will forward available dates for Ms. Battle as soon as we receive them.

Written Discovery and Documents:

Your characterization of the parties' meet-and-confer efforts is puzzling. As you know, SZC initiated the correspondence about resolving disputed discovery, and SZC requested the in-person meet-and-confer sessions. You asked to go through Plaintiffs' requests first because the first meeting was held at your offices, and you suggested that we would get a comprehensive proposal concerning the Plaintiffs' discovery requests on or about July 1 (following our meet-and-confer on June 27). We all agreed that SZC and Warner would review that proposal and see what parts of it could be used, in turn, as a framework for resolving disputes concerning SZC's and Warner's discovery requests (which were discussed on July 1). We did not get your proposal until July 9. We now need to determine what parts of it are agreeable, and what parts can be incorporated in our proposal regarding SZC's discovery requests. This all takes time and, while we would have preferred that it happened sooner, it was your delay, not ours, that slowed the process. We will get our counter-proposals to you this week, and we agree that we need to resolve any remaining issues promptly.

Finally, we want to clarify the status of our respective document productions to date. In the email below, you note that SZC has produced nothing, and Warner very little, but you fail to acknowledge that Plaintiffs have not made any sort of meaningful production. In fact, among all of the Plaintiff entities, we have received a single production (of less than 1500 pages) consisting of multiple copies of the same agreements. SZC has been diligent in its document collection and review and is planning to make a substantial production this week or early next week. We trust that we can expect a meaningful production from each Plaintiff entity before the end of next week. Please confirm that is your plan.

I am available to discuss any of these topics further.

Sincerely,

John C. Ulin

Arnold & Porter LLP
44th Floor
777 South Figueroa Street
Los Angeles, CA 90017-5844

Telephone: +1 213.243.4228
Cell Phone: +1 626.422.6092
John.Ulin@aporter.com
www.arnoldporter.com

From: Cestero, Ricardo [<mailto:rcester@greenbergglusker.com>]

Sent: Monday, July 15, 2013 7:10 PM

To: mlens@omm.com; Ulin, John C.

Cc: vjih@omm.com; Petrocelli, Daniel (dpetrocelli@omm.com); Primack, Nikolas A. (nprimack@omm.com); Callagy, Sean M.; Glick, Martin R.; Valadez, Rachel; Moriarty, Elisabeth; Eskenazi, Bonnie

Subject: Fourth Age Limited, et al. v. Warner Bros. Digital Distribution, et al.

Molly & John-

We are growing increasingly concerned by the lack of progress on discovery. In the wake of our lengthy meet and confer discussions, we promptly circulated a comprehensive summary of our discussions with respect to Warner and Zaentz's responses to our discovery requests. Based on our discussions, we had expected that you would each do the same. However, we have yet to receive anything from your side of the table. You have offered no explanation for this delay, nor have you indicated that a letter is forthcoming. In addition, this morning, Molly indicated that Warner would

not be able to respond to our letter of July 9, 2013 until possibly later this week. Zaentz has not responded at all to that letter. Obviously, any delay in reaching final agreement on the meet and confer process makes it more difficult and time consuming to review documents for production. The issues we discussed need to be resolved quickly, and we must insist that you place this matter at the top of your priority list.

It has now been over four months since the parties served the initial discovery requests and Zaentz has produced nothing, while Warner has produced very little. As we have repeatedly stated, we do not intend to make witnesses available for deposition until both Warner and Zaentz have completed their productions in response to our initial requests. At the current rate, it appears those productions will not be completed any time soon.

Given the lack of progress to date, we believe it is now necessary to give the parties deadlines for the production of documents. We will be prepared to make a substantial production of documents on Friday, July 26, 2013, and we propose that all parties mutually exchange documents ready for production on that date. We also will insist that all parties complete their productions by September 1, 2013, so that depositions can begin in late September or early October. Please let me know if you are prepared to produce documents on that schedule. If you are not, we must reserve all of our rights to compel a timely production of documents.

With respect to depositions, the weeks of September 9 and September 16 are no longer available for Steven Maier and Cathleen Blackburn. Please suggest dates at the end of September or October that would work for you for those depositions and we will see if they are clear. With respect to Priscilla Tolkien, she is available for deposition on October 9 or 10, 2013. Please advise as soon as possible if those dates will work for you. We are still waiting on dates from you for David Imhoff, Al Bendich, Laurie Battle. Please advise if the dates in October you previously offered for Ben Zinkin are still available.

Please feel free to call if you'd like to discuss these matters further.

Regards,

Ricardo

Ricardo P. Cestero | Attorney at Law | [Biography](#)
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EXHIBIT H

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Attorneys for Plaintiffs and Counterclaim Defendants

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

FOURTH AGE LIMITED, a United
Kingdom corporation; PRISCILLA MARY
ANNE REUEL TOLKIEN, as TRUSTEE
OF THE TOLKIEN TRUST, a United
Kingdom Charitable Trust; THE J.R.R.
TOLKIEN ESTATE LIMITED, a United
Kingdom corporation; HARPERCOLLINS
PUBLISHERS, LTD., a United Kingdom
corporation; UNWIN HYMAN LTD., a
United Kingdom corporation; and
GEORGE ALLEN & UNWIN
(PUBLISHERS) LTD., a United Kingdom
corporation,

Plaintiffs,

v.

WARNER BROS. DIGITAL
DISTRIBUTION, INC., a division of
WARNER BROS. HOME
ENTERTAINMENT, INC., a Delaware
corporation; WARNER BROS.
ENTERTAINMENT, INC., a Delaware
corporation, as successor-in-interest to New
Line Cinema Corp.; WARNER BROS.
CONSUMER PRODUCTS, INC., a
Delaware corporation; WARNER BROS.
INTERACTIVE ENTERTAINMENT,
INC., a division of WARNER BROS.
HOME ENTERTAINMENT, INC.; NEW
LINE PRODUCTIONS, INC., a California
corporation; THE SAUL ZAENTZ

Case No. CV 12-09912 ABC (SHx)

Assigned To: Hon. Audrey B.
Collins

**PLAINTIFFS AND
COUNTERCLAIM
DEFENDANTS' INITIAL
DISCLOSURES PURSUANT TO
F.R.C.P. 26(a)(1)(A)**

Trial Date: None Set

Action Filed: November 19, 2012

1 COMPANY d/b/a Middle-earth
2 Enterprises, a Delaware corporation; and
3 DOES 1-10, inclusive,
4 Defendants.

5 AND RELATED COUNTERCLAIMS.
6

7 Plaintiffs and Counterclaim Defendants Fourth Age Limited, Priscilla Mary
8 Anne Reuel Tolkien, as Trustee of the Tolkien Trust, The J.R.R. Tolkien Estate
9 Ltd., Harper Collins Publishers, Ltd., Unwin Hyman Ltd., and George Allen &
10 Unwin (Publishers), Ltd. (collectively, the "Tolkien/HC Parties") submit the
11 following initial disclosures pursuant to Rule 26(a) of the Federal Rules of Civil
12 Procedure.

13 The Tolkien/HC Parties make these initial disclosures based on information
14 presently known and without prejudice to or waiver of their right to supplement
15 these disclosures or to present additional or different information or evidence at
16 trial as permitted under the Federal Rules of Civil Procedure and the Local Rules of
17 this Court. These disclosures shall not be deemed as an admission as to any fact in
18 dispute or as a waiver of any rights or claims the Tolkien/HC Parties have asserted
19 or may assert in this action.

20 By making these disclosures, the Tolkien/HC Parties do not represent that
21 they are identifying every document, tangible thing or witness possibly relevant to
22 this action. The Tolkien/HC Parties' initial disclosures represent a good faith effort
23 at an early stage of this litigation to identify information they reasonably believe
24 may be relevant to their claims and defenses in this case.

25 The Tolkien/HC Parties reserve the right to object to the production and/or
26 admission of any testimony, witness, document or tangible thing identified in these
27 initial disclosures.
28

GREENBERG GLUSKER FIELDS CLAMAN
& MACHTINGER LLP
1900 Avenue of the Stars, 21st Floor
Los Angeles, California 90067-4590

Definitions

As used herein, the following terms shall have the following meanings:

- A. "Zaentz" means defendant and counterclaimant The Saul Zaentz Company d/b/a Middle-earth Enterprises.
- B. "Warner" means defendants and counterclaimants Warner Bros. Home Entertainment, Inc., Warner Bros. Entertainment, Inc., Warner Bros. Consumer Products, Inc., Warner Bros. Digital Distribution, New Line Productions, Inc., and their predecessor in interest, New Line Cinema Corp.
- C. The "Tolkien Parties" means plaintiffs and counterclaim defendants Fourth Age Limited, Priscilla Mary Anne Reuel Tolkien, as Trustee of the Tolkien Trust, and The J.R.R. Tolkien Estate Ltd.
- D. The "H/C Parties" means plaintiffs and counterclaim defendants Harper Collins Publishers, Ltd., Unwin Hyman Ltd., and George Allen & Unwin (Publishers), Ltd.
- E. "United Artists" means the entity United Artists Corporation.
- F. The "Complaint" means the Complaint filed by The Tolkien/HC Parties in the above-entitled action.
- G. The "1969 GAU Agreement" means the contract entered into between George Allen & Unwin, Ltd. and Warner's predecessor in interest, United Artists, on July 8, 1969.
- H. The "1969 Sassoon Agreement" means the contract entered into between the Sassoon Trustee and Executor Corp., Ltd. and Warner's predecessor in interest, United Artists, on July, 8, 1969.
- I. The "1969 Agreements" means the 1969 GAU Agreement and the 1969 Sassoon Agreement.
- J. The "Merchandising License" means Schedule D to the 1969 GAU Agreement, Schedule D to the 1969 Sassoon Agreement, and the 1975 and

1 1981 Amendments to those Schedules, as defined in paragraph 40 of the
2 Complaint.

3 K. The "Tolkien Works" means the three volume literary work by the author
4 J.R.R. Tolkien, consisting of "The Lord of the Rings: The Fellowship of the
5 Ring," "The Lord of the Rings: The Two Towers," and "The Lord of the
6 Rings: The Return of the King," as well as J.R.R. Tolkien's literary work,
7 "The Hobbit."

8 L. "Video Games" means interactive, computer, and other electronic and/or
9 digital games featuring characters, events, images and/or story elements from
10 the Tolkien Works.

11 M. "Intangible Video Games" Video Games based on the Tolkien Works that
12 are delivered otherwise than by way of physical media such as DVD or
13 cartridge, including (but not limited to) games delivered by way of electronic
14 download, mobile telephone networks or social media websites.

15 N. "Online Slots" means any online gambling slot machine game featuring
16 characters, events, images and/or story elements from the Tolkien Works,
17 including, but not limited to, the "Online Slots" as defined in paragraph 45 of
18 the Complaint.

19 O. "Casino Slot Machines" means any gambling casino slot machine featuring
20 characters, events, images and/or story elements from the Tolkien Works,
21 including, but not limited to, the "Casino Slot Machine" as defined in
22 paragraph 48 of the Complaint.

23 P. The "Disputed Marks" means the trademarks and/or service marks being
24 exploited by Zaentz and/or Warner based on, or related to, the characters,
25 events, images and/or story elements from the Tolkien Works, which the
26 Tolkien/HC Parties allege are beyond the scope of the Merchandising
27 License, as alleged in paragraphs 81-84 of the Complaint. The Disputed
28 Marks include, but are not limited to, trademarks and/or service marks

1 registered in connection with hotels, restaurants, travel agencies, ringtones,
2 housing developments, Online Slots, Casino Slot Machines, Intangible
3 Games, and in International Class 16.

4 Q. The "2010 Regrant Agreement" means the agreement dated as of September
5 1, 2010 between the Tolkien/HC Parties and several other Tolkien-related
6 entities and heirs, as well as Zaentz and certain of the Warner-related parties,
7 relating to the Tolkien Works.

8 R. The "Hobbit Term Sheet" means the Hobbit Binding Term Sheet dated as of
9 September 7, 2010 entered into by several of the Tolkien/HC Parties and
10 related persons and entities, and several Warner and Zaentz related entities.

11 S. The "Binding Term Sheet" means the Binding Term Sheet dated as of
12 August 21, 2009 entered into by several of the Tolkien/HC Parties and
13 related persons and entities, and several Warner related entities.

14
15 **1. Witness Disclosures**

16 The Tolkien/HC Parties currently believe that the following witnesses,
17 excluding expert witnesses, are likely to have discoverable information that the
18 Tolkien/HC Parties may use to support their claims and defenses, unless solely for
19 impeachment. The Tolkien/HC Parties reserve the right to supplement these
20 disclosures as discovery continues and as the case develops, or as otherwise
21 reasonably necessary and appropriate:

22 a. Cathleen Blackburn. Ms. Blackburn is an attorney at Maier
23 Blackburn, counsel for the Tolkien Parties. Ms. Blackburn can be contacted c/o the
24 Tolkien/HC Parties' counsel of record. Subjects of information include, without
25 limitation: (i) the 1969 Agreements; (ii) the Merchandising License; (iii) Video
26 Games; (iv) Intangible Video Games; (v) Online Slots; (vi) Casino Slot Machines;
27 (vii) the Disputed Marks; (viii) communications between and among the
28 Tolkien/HC Parties, Zaentz, Warner, and third parties as they relate to Video

1 Games, Intangible Video Games, Online Slots, Casino Slot Machines, and the
2 Disputed Marks; (viii) the goodwill the Tolkien/HC Parties have cultivated
3 surrounding the Tolkien Works and related intellectual property; (ix) the 2010
4 Regrant Agreement, The Binding Term Sheet, and the Hobbit Term Sheet; and (x)
5 the settlement discussions between the Tolkien/HC Parties, Zaentz, and Warner that
6 preceded the filing of the above-entitled action.

7 b. Dick Williamson. Mr. Williamson was an attorney for the Tolkien
8 Parties at various times throughout the parties' history. Mr. Williamson can be
9 contacted c/o the Tolkien/HC Parties' counsel of record. Subjects of information
10 include, without limitation: (i) 1969 Agreements; (ii) the Merchandising License;
11 (iii) Video Games; (iv) Intangible Video Games; (v) Online Slots; (vi) Casino Slot
12 Machines; (vii) the Disputed Marks; (viii) communications between and among the
13 Tolkien/HC Parties, Zaentz, and third parties as they relate to Video Games,
14 Intangible Video Games, Online Slots, Casino Slot Machines, and the Disputed
15 Marks.

16 c. Priscilla Mary Anne Reuel Tolkien. Ms. Tolkien is a trustee of the
17 Tolkien Trust and plaintiff in this action. Ms. Tolkien can be contacted c/o the
18 Tolkien/HC Parties' counsel of record. Subjects of information include, without
19 limitation: the goodwill the Tolkien/HC Parties have cultivated surrounding the
20 Tolkien Works and related intellectual property.

21 d. David Brawn. Mr. Brawn is an employee of plaintiff and counterclaim
22 defendant HarperCollins Publishers, Ltd. Mr. Brawn can be contacted c/o the
23 Tolkien/HC Parties' counsel of record. Subjects of information include, without
24 limitation: (i) the 1969 Agreements; (ii) the Merchandising License; (iii) Video
25 Games; (iv) Intangible Video Games; (v) Online Slots; (vi) Casino Slot Machines;
26 (vii) the Disputed Marks; and (viii) communications between and among the
27 Tolkien/HC Parties, Zaentz, Warner, and third parties as they relate to Video
28 Games, Intangible Video Games, Online Slots, Casino Slot Machines, and the

1 Disputed Marks.

2 e. Mary Butler. Ms. Butler was an employee of plaintiff and
3 counterclaim defendant Unwin Hyman Ltd. Subjects of information include,
4 without limitation: (i) the 1969 Agreements; (ii) the Merchandising License; (iii)
5 Video Games; (iv) Intangible Video Games; (v) Online Slots; (vi) Casino Slot
6 Machines; (vii) the Disputed Marks; and (viii) communications between and among
7 the Tolkien/HC Parties, Zaentz, Warner, and third parties as they relate to Video
8 Games, Intangible Video Games, Online Slots, Casino Slot Machines, and the
9 Disputed Marks.

10 f. Adrian Laing. Mr. Laing was an employee and in-house counsel at
11 plaintiff and counterclaim defendant HarperCollins Publishers, Ltd. Subjects of
12 information include, without limitation: (i) the Merchandising License; (ii) Video
13 Games; (iii) Intangible Video Games; (iv) Online Slots; (v) Casino Slot Machines;
14 (vi) the Disputed Marks; and (vii) communications between and among the
15 Tolkien/HC Parties, Zaentz, Warner, and third parties as they relate to Video
16 Games, Intangible Video Games, Online Slots, Casino Slot Machines, and the
17 Disputed Marks.

18 g. Bonnie E. Eskenazi. Ms. Eskenazi is an attorney at Greenberg Glusker
19 Fields Claman & Machtinger LLP, counsel of record for the Tolkien/HC Parties.
20 Subjects of information include, without limitation: (i) the 2010 Regrant
21 Agreement, The Binding Term Sheet, and the Hobbit Term Sheet; and (ii) the
22 settlement discussions between the Tolkien/HC Parties, Zaentz, and Warner that
23 preceded the filing of the above-entitled action.

24 h. Ricardo P. Cestero. Mr. Cestero is an attorney at Greenberg Glusker
25 Fields Claman & Machtinger LLP, counsel of record for the Tolkien/HC Parties.
26 Subjects of information include, without limitation: (i) the 2010 Regrant
27 Agreement, The Binding Term Sheet, and the Hobbit Term Sheet; and (ii) the
28 settlement discussions between the Tolkien/HC Parties, Zaentz, and Warner that

1 preceded the filing of the above-entitled action.

2 i. Alan Benjamin. Mr. Benjamin was a business affairs executive at
3 United Artists. Mr. Benjamin can be contacted c/o the Tolkien/HC Parties' counsel
4 of record. Subjects of information include, without limitation: (i) 1969 Agreement;
5 and (ii) Merchandising License.

6 j. Albert M. Bendich. Mr. Bendich can be contacted at 2600 Tenth St.,
7 Berkeley, California, 94710. Mr. Bendich was, and on information and belief, still
8 is, a vice-president and general counsel for Zaentz. Subjects of information
9 include, without limitation: (i) the Merchandising License; (ii) Video Games; (iii)
10 Intangible Video Games; (iv) Online Slots; (v) Casino Slot Machines; (vi) the
11 Disputed Marks; (vii) the goodwill the Tolkien/HC Parties have cultivated
12 surrounding the Tolkien Works and related intellectual property; and (viii)
13 communications between and among the Tolkien/HC Parties, Zaentz, Warner, and
14 third parties as they relate to Video Games, Intangible Video Games, Online Slots,
15 Casino Slot Machines, and the Disputed Marks.

16 k. Thomas A. Magnani. Mr. Magnani was an attorney at Howard, Rice,
17 Nemerovski, Canady, Falk & Rabkin, counsel for Zaentz at various times
18 throughout the parties' history. On information and belief, Mr. Magnani is
19 currently a partner at Arnold & Porter LLP, counsel of record for Zaentz. Subjects
20 of information include, without limitation: (i) the Merchandising License; (ii)
21 Video Games; (iii) Intangible Video Games; (iv) Online Slots; (v) Casino Slot
22 Machines; (vi) the Disputed Marks; (vii) communications between and among the
23 Tolkien/HC Parties, Zaentz, Warner, and third parties as they relate to Video
24 Games, Intangible Video Games, Online Slots, Casino Slot Machines, and the
25 Disputed Marks; (viii) the 2010 Regrant Agreement, The Binding Term Sheet, and
26 the Hobbit Term Sheet; and (ix) the settlement discussions between the
27 Tolkien/HC Parties, Zaentz, and Warner that preceded the filing of the above-
28 entitled action.

1 l. David Imhoff. Mr. Imhoff was an executive at New Line Cinema
2 Corp. Subjects of information include, without limitation: (i) the Merchandising
3 License; (ii) Video Games; (iii) Intangible Video Games; (iv) Online Slots; (v)
4 Casino Slot Machines; (vi) the Disputed Marks; and (vii) communications between
5 and among the Tolkien/HC Parties, Zaentz, Warner, and third parties as it relates to
6 Video Games, Intangible Video Games, Online Slots and Casino Slot Machines.

7 m. Benjamin Zinkin. Mr. Zinkin was an executive at, and at times general
8 counsel of, New Line Cinema Corp. Subjects of information include, without
9 limitation: (i) the Merchandising License; (ii) Video Games; (iii) Intangible Video
10 Games; (iv) Online Slots; (v) Casino Slot Machines; (vi) the Disputed Marks; and
11 (vii) communications between and among the Tolkien/HC Parties, Zaentz, Warner,
12 and third parties as they relate to Video Games, Intangible Video Games, Online
13 Slots, Casino Slot Machines, and the Disputed Marks.

14 n. Jeremy Williams. Mr. Williams is an attorney at Warner. Subjects of
15 information include, without limitation: (i) the Merchandising License; (ii) Video
16 Games; (iii) Intangible Video Games; (iv) Online Slots; (v) Casino Slot Machines;
17 (vi) the Disputed Marks; (vii) communications between and among the Tolkien/HC
18 Parties, Zaentz, Warner, and third parties as they relate to Video Games, Intangible
19 Video Games, Online Slots, Casino Slot Machines, and the Disputed Marks; (viii)
20 the 2010 Regrant Agreement, The Binding Term Sheet, and the Hobbit Term Sheet;
21 and (ix) the settlement discussions between the Tolkien/HC Parties, Zaentz, and
22 Warner that preceded the filing of the above-entitled action.

23 o. Mark B. Helm. Mr. Helm is an attorney at Munger, Tolles & Olson
24 LLP, counsel for Warner at various times throughout the parties' history. Subjects
25 of information include, without limitation: (i) the 2010 Regrant Agreement, The
26 Binding Term Sheet, and the Hobbit Term Sheet; and (ii) the settlement discussions
27 between the Tolkien/HC Parties, Zaentz, and Warner that preceded the filing of the
28 above-entitled action.

1 p. Eric P. Tuttle. Mr. Tuttle is an attorney at Munger, Tolles & Olson
2 LLP, counsel for Warner at various times throughout the parties' history. Subjects
3 of information include, without limitation: (i) the 2010 Regrant Agreement, The
4 Binding Term Sheet, and the Hobbit Term Sheet; and (ii) the settlement discussions
5 between the Tolkien/HC Parties, Zaentz, and Warner that preceded the filing of the
6 above-entitled action.

7 q. Unknown employees and representatives at Warner, including, without
8 limitation, persons with knowledge of Warner's licensing activity related to the
9 Tolkien Works and persons with knowledge of the development of the Online
10 Slots, Casino Slot Machines and Intangible Video Games, including what elements
11 of the Tolkien Works were incorporated therein. The Tolkien/HC Parties reserve
12 the right to depose and/or call as a witness a Warner representative designated
13 pursuant to F.R.C.P. 30(b)(6).

14 r. Unknown employees and representatives at Zaentz, including, without
15 limitation, persons with knowledge of Zaentz's licensing and trademark activity
16 related to the Tolkien Works and persons with knowledge of the development of the
17 Online Slots, Casino Slot Machines and Intangible Video Games, including what
18 elements of the Tolkien Works were incorporated therein. The Tolkien/HC Parties
19 reserve the right to depose and/or call as a witness a Zaentz representative
20 designated pursuant to F.R.C.P. 30(b)(6).

21 s. Unknown witnesses at Sierra Online who were involved with the
22 negotiation of the 1998 license related to the Tolkien Works.

23 t. The Tolkien/HC Parties also incorporate by reference the list of
24 individuals identified by Zaentz and the Warner Parties in their Initial Disclosures
25 and reserve the right to call any such witnesses.

26
27 **2. Document Disclosure**

28 The Tolkien/HC Parties are presently aware of the following documents,

1 electronically stored information, and tangible things in their possession, custody or
2 control that they may use to support their claims and defenses, unless solely for
3 impeachment. The listing of a category of documents is not a representation that
4 the Tolkien/HC Parties have necessarily obtained such documents or that any such
5 category is necessarily discoverable or relevant. The Tolkien/HC Parties reserve
6 the right to supplement these disclosures as discovery continues and as the case
7 develops, or as otherwise reasonably necessary and appropriate, and to object to the
8 discovery of any of the following categories of documents or any specific document
9 falling into such category on any grounds permitted by the applicable rules and the
10 law.

11 a. The 1969 Agreements and documents and communications relating
12 thereto.

13 b. Schedules D to the 1969 Agreements and documents and
14 communications relating thereto.

15 c. The 1975 Amendment to Schedules D to the 1969 Agreements, and
16 documents and communications relating thereto.

17 d. The 1981 Amendment to Schedules D to the 1969 Agreements, and
18 documents and communications relating thereto.

19 e. The WMS Gaming License, the Microgaming License, and any other
20 licenses purporting to grant rights relating to Intangible Video Games, Casino Slot
21 Machines, Online Slots and/or the Disputed Marks, and documents and
22 communications relating thereto.

23 f. The August 7, 1998 agreement between New Line Cinema and Zaentz,
24 the May 9, 2000 agreement between New Line Cinema and Zaentz, and the
25 interactive game license dated May 27, 2009 between Zaentz and Warner Bros.
26 Games, Inc., and documents and communications relating thereto.

27 g. The Tolkien Works.

28 h. The films produced by Warner that are based on the Tolkien Works.

i. The Video Games, Intangible Video Games, Online Games and Casino Gambling Games.

j. The 2010 Regrant Agreement, the Binding Term Sheet, and the Hobbit Term Sheet, and documents and communications relating thereto.

k. The December 2, 1976 agreement between United Artists and Zaentz, and documents and communications relating thereto.

l. The draft agreement dated March 15, 2000 proposed by Ben Zinkin to the Tolkien/HC Parties and rejected by the Tolkien/HC Parties, and documents and communications relating thereto.

m. Trade and service mark applications and registrations relating to the Disputed Marks.

n. Documents and communications relating to the Merchandising License, Online Slots, Casino Slot Machines, Intangible Video Games, and the Disputed Marks.

o. Documents and communications relating to the value of Tolkien Work-related Intangible Video Games and/or new media rights on the open market.

p. Documents reflecting the history of interactive, computer, and other electronic and/or digital games incorporating the Tolkien Works, including, without limitation, the Electronic Arts, Sierra Online, and Turbine licenses, and communications amongst the parties and with third parties relating thereto.

q. Documents evidencing royalties or other amounts received by Zaentz in connection with merchandising rights.

r. Documents evidencing royalties or other amounts received by Warner in connection with merchandising rights.

s. Documents evidencing revenues earned and/or projected to be earned in connection with gambling games based on, incorporating, or related to Video Games, Intangible Video Games, Online Slots and Casino Slot Machines.

t. Documents evidencing the division and computation of royalties as

1 between Warner, Zaentz and the Tolkien/HC Parties in connection with Video
2 Games, Intangible Video Games, Online Slots and Casino Slot Machines.

3 u. Documents establishing the goodwill the Tolkien/HC Parties have
4 cultivated surrounding the Tolkien Works and related intellectual property.

5 v. Documents evidencing negative reactions to gambling-related games
6 featuring the Tolkien Works, including the Online Slots and the Casino Slot
7 Machines.

8 w. All communications between and among Zaentz, Warner, and the
9 Tolkien/HC Parties relating to Online Slots, Casino Slot Machines, Video Games,
10 Intangible Video Games, the Disputed Marks, the Tolkien/HC Parties' claims and
11 defenses in the above-entitled action, Zaentz's and Warner's claims and defenses in
12 the above-entitled action, and any objections by the Tolkien/HC Parties relating to
13 any of the above.

14
15 **3. Computation of Damages**

16 The Tolkien/HC Parties' damages in this case will either be the subject of
17 expert testimony, or such information is uniquely in the possession of Zaentz and/or
18 Warner. However, as to Intangible Video Games, the Tolkien/HC Parties are
19 informed and believe that, conservatively, and assuming worldwide licensing across
20 all categories of exploitation (e.g. mobile, social, MMOs, casual) and some
21 geographic, territory specific licenses (e.g. China and Japan) across platforms, the
22 total of typical minimum guarantees for such licenses would be in the range of
23 approximately \$80 million to \$130 million for a five year license for fantasy-genre
24 properties as beloved and historically successful as the Tolkien Works. Damages
25 resulting from Zaentz' and Warner's licensing and exploitation of the Disputed
26 Marks, Online Slots, and Casino Slot Machines are currently unknown, but are
27 believed to be multiple millions of dollars. Additionally, the Tolkien/HC Parties
28 have incurred, and continue to incur, substantial attorneys' fees in pursuing this

1 action.

2 The Tolkien/HC Parties reserve the right to supplement these disclosures as
3 discovery continues and as the case develops, or as otherwise reasonably necessary
4 and appropriate.

5
6 **4. Insurance**

7 The Tolkien/HC Parties are not currently aware of any applicable insurance
8 policies.

9
10 DATED: March 28, 2013

GREENBERG GLUSKER FIELDS
CLAMAN & MACHTINGER LLP

11
12
13 By: 
14 BONNIE E. ESKENAZI (SBN 119401)
15 Attorneys for PLAINTIFFS AND
16 COUNTERCLAIM DEFENDANTS
17
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28

GREENBERG GLUSKER FIELDS CLAMAN
& MACHTINGER LLP
1900 Avenue of the Stars, 21st Floor
Los Angeles, California 90067-4590

PROOF OF SERVICE BY MAIL

I am a citizen of the United States and employed in Los Angeles County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 1900 Avenue of the Stars, 21st Floor, Los Angeles, California 90067. I am readily familiar with this firm's practice for collection and processing of correspondence for mailing with the United States Postal Service. On March 28, 2013, I placed with this firm at the above address for deposit with the United States Postal Service a true and correct copy of the within document(s):

PLAINTIFFS AND COUNTERCLAIM DEFENDANTS'
INITIAL DISCLOSURES PURSUANT TO F.R.C.P.
26(a)(1)(A)

in a sealed envelope, postage fully paid, addressed as follows:

SEE ATTACHED SERVICE LIST

Following ordinary business practices, the envelope was sealed and placed for collection and mailing on this date, and would, in the ordinary course of business, be deposited with the United States Postal Service on this date.

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on March 28, 2013, at Los Angeles, California.


Robert Massing

GREENBERG GLUSKER FIELDS CLAMAN
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INTERACTIVE
ENTERTAINMENT, INC.;
NEW LINE
PRODUCTIONS, INC.

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EXHIBIT I

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Attorneys for the Warner Parties

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

FOURTH AGE LTD., *et al*,

Plaintiffs,

v.

WARNER BROS. DIGITAL
DISTRIBUTION, *et al*,

Defendants.

Case No. 12-9912-ABC (SHx)

**WARNER'S INITIAL
DISCLOSURES**

Judge: Hon. Audrey B. Collins
Magistrate: Hon. Stephen J. Hillman

WARNER BROS. DIGITAL
DISTRIBUTION INC., *et al*,

Counterclaim
Plaintiffs,

v.

FOURTH AGE LTD., *et al*,

Counterclaim
Defendants.

Defendants and Counterclaim Plaintiffs Warner Bros. Home Entertainment Inc., Warner Bros. Entertainment Inc., Warner Bros. Consumer Products Inc., and New Line Productions, Inc. (collectively, "Warner") hereby submit the following initial disclosures in relation to the above-captioned action. These disclosures are made pursuant to Federal Rule of Civil Procedure 26(a)(1) and Judge Audrey B. Collins' January 30, 2013 Order Re: Scheduling Conference. Because formal discovery has just commenced in this matter, the content of this disclosure statement is provisional and based on the limited information currently available. Warner expects to obtain additional information during the discovery process and to advance and refine its understanding of the facts currently known. Warner expressly reserves the right under Rule 26(e) to amend or supplement this disclosure as discovery progresses. These disclosures are subject to and made without waiving Warner's right to assert in these or any other proceedings any and all objections as to competency, relevancy, materiality, privilege, work-product, use or admissibility as evidence of these initial disclosures or their subject matters.

I. RULE 26(a)(1)(A)(i): WITNESSES

Pursuant to Rule 26(a)(1)(A)(i), Warner identifies the following individuals it believes may have discoverable information that Warner may use to support its defenses and counterclaims, along with each individual's current contact information, if known. Warner's initial disclosure of the identities of potential witnesses is based solely upon a reasonable investigation conducted in the time available, as well as Warner's present analysis of the case. This disclosure is not a representation that additional witnesses do not exist. Accordingly, this disclosure may be supplemented or modified by additional individuals with knowledge of facts rebutting the material allegations of Plaintiffs' complaint and/or supporting the material allegations of Warner's affirmative defenses and counterclaims. In addition to the witnesses named below, Warner may also rely on other current or former employees of Warner and any witnesses designated by Defendant and

Counterclaim Plaintiff The Saul Zaentz Company (“Zaentz”) or by Plaintiffs and Counterclaim Defendants Fourth Age Ltd., The Tolkien Trust, The J.R.R. Tolkien Estate Ltd., HarperCollins Publishers Ltd., Unwin Hyman Ltd., and George Allen & Unwin (Publishers) Ltd. (collectively, “Plaintiffs” or “Counterclaim Defendants”) in their initial disclosures. By making the following disclosures, Warner is not waiving the attorney-client privilege and/or work-product immunity, nor is it waiving its right to object to the deposition of any individual pursuant to the Federal Rules of Civil Procedure and any other applicable rules or orders.

A. Tolkien/HarperCollins Witnesses

<u>Name, Title, Location</u>	<u>Subjects of Information</u>
<i>Cathleen Blackburn</i> Partner at Maier Blackburn LLP Maier Blackburn LLP, Prama House, 267 Banbury Road, Oxford OX2 7HT, United Kingdom	Plaintiffs’ knowledge/awareness of exploitation; Parties’ agreements, including rights granted and negotiations.
<i>Bonnie Eskenazi</i> Partner at Greenberg Glusker Fields Claman & Machtinger LLP Greenberg Glusker Fields Claman & Machtinger LLP, 1900 Avenue of the Stars, 21st Floor, Los Angeles, CA, 90067	Plaintiffs’ knowledge/awareness of exploitation; Parties’ agreements, including rights granted and negotiations.
<i>Stephen Maier</i> Partner at Maier Blackburn LLP Maier Blackburn LLP, Prama House, 267 Banbury Road, Oxford OX2 7HT, United Kingdom	Plaintiffs’ knowledge/awareness of exploitation; Parties’ agreements, including rights granted and negotiations.

1	<i>Ricardo Cestero</i>	
2	Partner at Greenberg Glusker Fields	Plaintiffs' knowledge/awareness of
3	Claman & Machtinger LLP	exploitation; Parties' agreements,
4	Greenberg Glusker Fields Claman &	including rights granted and
5	Machtinger LLP, 1900 Avenue of the	negotiations.
	Stars, 21st Floor, Los Angeles, CA, 90067	
6	<i>Elisabeth Moriarty</i>	
7	Partner at Greenberg Glusker Fields	Plaintiffs' knowledge/awareness of
8	Claman & Machtinger LLP	exploitation; Parties' agreements,
9	Greenberg Glusker Fields Claman &	including rights granted and
10	Machtinger LLP, 1900 Avenue of the	negotiations.
	Stars, 21st Floor, Los Angeles, CA, 90067	
11	<i>Mickey Mayerson</i>	
12	Partner at Loeb & Loeb LLP	Plaintiffs' knowledge/awareness of
13	Loeb & Loeb LLP, 10100 Santa Monica	exploitation; Parties' agreements,
14	Boulevard Suite 2200 Los Angeles, CA	including rights granted and
	90067	negotiations.
15	<i>Robert Meyer</i>	
16	Partner at Loeb & Loeb LLP	Plaintiffs' knowledge/awareness of
17	Loeb & Loeb LLP, 10100 Santa Monica	exploitation; Parties' agreements,
18	Boulevard Suite 2200 Los Angeles, CA	including rights granted and
	90067.	negotiations.
19	<i>Christopher Tolkien</i>	
20	Tolkien heir	Plaintiffs' knowledge/awareness of
21	Address unknown	exploitation; Parties' agreements,
		including rights granted and
22	<i>Priscilla Mary Anne Reuel</i>	
23	Tolkien heir	Plaintiffs' knowledge/awareness of
24	Address unknown	exploitation; Parties' agreements,
		including rights granted and
25	<i>Baillie Jean Tolkien</i>	
26	Tolkien heir	Plaintiffs' knowledge/awareness of
27	Address unknown	exploitation; Parties' agreements,
		including rights granted and
28		negotiations.

1	<i>Michael George Reuel Tolkien</i>	Plaintiffs' knowledge/awareness of
2	Tolkien heir	exploitation; Parties' agreements,
3	Address unknown	including rights granted and
4		negotiations.
5	<i>Judith Mary Reuel Crombleholme</i>	Plaintiffs' knowledge/awareness of
6	Tolkien heir	exploitation; Parties' agreements,
7	Address unknown	including rights granted and
8		negotiations.
9	<i>Joan Anne Reuel Tolkien</i>	Plaintiffs' knowledge/awareness of
10	Tolkien heir	exploitation; Parties' agreements,
11	Address unknown	including rights granted and
12		negotiations.
13	<i>Adam Reuel Tolkien</i>	Plaintiffs' knowledge/awareness of
14	Tolkien heir	exploitation; Parties' agreements,
15	Address unknown	including rights granted and
16		negotiations.
17	<i>Rachel Clare Reuel Tolkien</i>	Plaintiffs' knowledge/awareness of
18	Tolkien heir	exploitation; Parties' agreements,
19	Address unknown	including rights granted and
20		negotiations.
21	<i>Simon Mario Reuel Tolkien</i>	Plaintiffs' knowledge/awareness of
22	Tolkien heir	exploitation; Parties' agreements,
23	Address unknown	including rights granted and
24		negotiations.
25	<i>Piers Edmund Crombleholme</i>	Plaintiffs' knowledge/awareness of
26	Tolkien heir	exploitation; Parties' agreements,
27	Address unknown	including rights granted and
28		negotiations.
	<i>Adrian Laing</i>	Plaintiffs' knowledge/awareness of
	Former Director of Legal Affairs,	exploitation; Parties' agreements,
	HarperCollins; Current Solicitor Advocate	including rights granted and
	at Laing & Co.	negotiations.
	Laing & Co.,	
	1 Langbourne Avenue, Highgate, London	
	N6 6AJ	

1 2 3 4	<i>Frank Richard Williamson</i> Executor, The J.R.R. Tolkien Estate Address unknown	Plaintiffs' knowledge/awareness of exploitation; Parties' agreements, including rights granted and negotiations.
5 6 7	<i>David Brawn</i> Publishing Director, HarperCollins HarperCollins Publishers, 77-85 Fulham Palace Road, Hammersmith, London W6 8JB	Plaintiffs' knowledge/awareness of exploitation; Parties' agreements, including rights granted and negotiations.
8 9 10 11	<i>David Daley</i> Legal Advisor, Solicitor, HarperCollins HarperCollins Publishers, 77-85 Fulham Palace Road, Hammersmith, London W6 8JB	Plaintiffs' knowledge/awareness of exploitation; Parties' agreements, including rights granted and negotiations.
12 13 14 15	<i>Simon Dowson-Collins</i> Director, Legal Services, HarperCollins HarperCollins Publishers, 77-85 Fulham Palace Road, Hammersmith, London W6 8JB	Plaintiffs' knowledge/awareness of exploitation; Parties' agreements, including rights granted and negotiations.

B. Warner Witnesses

<u>Name, Title, Location</u>	<u>Subjects of Information</u>
<i>Jeremy Williams</i> Senior Vice President, Deputy General Counsel, Warner Bros. Entertainment Inc. c/o O'Melveny & Myers LLP, 1999 Avenue of the Stars, Suite 700, Los Angeles, CA 90067-6035 (310-553-6700).	Plaintiffs' knowledge/awareness of exploitation; Parties' agreements, including rights granted and negotiations.
<i>Robyn Martin</i> Senior Vice President, New Line Cinema LLC. c/o O'Melveny & Myers LLP, 1999 Avenue of the Stars, Suite 700, Los Angeles, CA 90067-6035 (310-553-6700).	Plaintiffs' knowledge/awareness of exploitation; Parties' agreements, including rights granted and negotiations.

1	<i>Mark Helm</i>	
2	Partner at Munger Tolles & Olson LLP	Plaintiffs' knowledge/awareness of
3	Munger Tolles & Olson LLP, 355 South	exploitation; Parties' agreements,
4	Grand Ave., 35 th Floor, Los Angeles, CA	including rights granted and
5	90071.	negotiations.
6	<i>Carolyn Blackwood</i>	
7	Executive Vice President, New Line	Plaintiffs' knowledge/awareness of
8	Cinema LLC.	exploitation; Parties' agreements,
9	c/o O'Melveny & Myers LLP, 1999	including rights granted and
10	Avenue of the Stars, Suite 700, Los	negotiations.
11	Angeles, CA 90067-6035 (310-553-6700).	
12	<i>Ana de Castro</i>	
13	Vice President, Warner Bros. Consumer	Warner's exploitation of disputed
14	Products	activity.
15	c/o O'Melveny & Myers LLP, 1999	
16	Avenue of the Stars, Suite 700, Los	
17	Angeles, CA 90067-6035 (310-553-6700).	
18	<i>Monica Kim</i>	
19	Senior Counsel, Legal and Business	Warner's exploitation of disputed
20	Affairs, Warner Bros. Interactive	activity.
21	Entertainment	
22	c/o O'Melveny & Myers LLP, 1999	
23	Avenue of the Stars, Suite 700, Los	
24	Angeles, CA 90067-6035 (310-553-6700).	
25	<i>Jennifer Stump</i>	
26	Vice President, Deputy General Counsel,	Warner's exploitation of disputed
27	Warner Bros. Interactive Entertainment	activity.
28	c/o O'Melveny & Myers LLP, 1999	
	Avenue of the Stars, Suite 700, Los	
	Angeles, CA 90067-6035 (310-553-6700).	
	<i>Debra Baker</i>	
	Senior Vice President, Operations, Warner	Warner's exploitation of disputed
	Bros. Interactive Entertainment	activity.
	c/o O'Melveny & Myers LLP, 1999	
	Avenue of the Stars, Suite 700, Los	
	Angeles, CA 90067-6035 (310-553-6700).	

<p><i>Gary Stutman</i></p> <p>Vice President, Financial Contract Reporting and Administration, Warner Bros. Entertainment Inc.</p> <p>c/o O'Melveny & Myers LLP, 1999 Avenue of the Stars, Suite 700, Los Angeles, CA 90067-6035 (310-553-6700).</p>	<p>Revenue from the challenged exploitation.</p>
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C. Zaentz Witnesses

<u>Name, Title, Location</u>	<u>Subjects of Information</u>
<p><i>Albert Bendich</i></p> <p>c/o Arnold & Porter LLP, Three Embarcadero Center, Tenth Floor, San Francisco, CA 94111-4024</p>	<p>Plaintiffs' knowledge/awareness of exploitation; Parties' agreements, including rights granted and negotiations.</p>
<p><i>Fredrica Drotos</i></p> <p>c/o Arnold & Porter LLP, Three Embarcadero Center, Tenth Floor, San Francisco, CA 94111-4024</p>	<p>Plaintiffs' knowledge/awareness of exploitation; Parties' agreements, including rights granted and negotiations.</p>
<p><i>Paul Zaentz</i></p> <p>c/o Arnold & Porter LLP, Three Embarcadero Center, Tenth Floor, San Francisco, CA 94111-4024</p>	<p>Plaintiffs' knowledge/awareness of exploitation; Parties' agreements, including rights granted and negotiations.</p>
<p><i>Laurie Battle</i></p> <p>c/o Arnold & Porter LLP, Three Embarcadero Center, Tenth Floor, San Francisco, CA 94111-4024</p>	<p>Plaintiffs' knowledge/awareness of exploitation; Parties' agreements, including rights granted and negotiations.</p>
<p><i>Thomas Magnani</i></p> <p>Partner at Arnold & Porter LLP</p> <p>Arnold & Porter LLP, Three Embarcadero Center, Tenth Floor, San Francisco, CA 94111-4024</p>	<p>Plaintiffs' knowledge/awareness of exploitation; Parties' agreements, including rights granted and negotiations.</p>

Carole Barrett

Partner at Arnold & Porter LLP

Arnold & Porter LLP, Three Embarcadero
Center, Tenth Floor, San Francisco, CA
94111-4024

Plaintiffs' knowledge/awareness of
exploitation; Parties' agreements,
including rights granted and
negotiations.

II. RULE 26(a)(1)(A)(ii): DOCUMENTS

Subject to the preliminary statement above and without waiving any available objections to the relevance or admissibility of such documents, Warner is producing simultaneously with its disclosures a good-faith first production of documents that are in its possession, custody, or control that Warner may use to support its defenses, counterclaims, or to rebut material allegations in Plaintiffs' complaint.

III. RULE 26(a)(1)(A)(iii): DAMAGES

Warner has asserted a claim for compensatory damages to reimburse it for injury to its business as a result of the Estate's breach of contract. Warner has been significantly harmed as a result of Counterclaim Defendants' breach of the 2010 Regrant Agreement. Counterclaim Defendants' breach has severely hampered Warner's ability to exercise the rights granted. For example, because of the repudiation, Warner terminated its online gambling license agreement with Microgaming. This cost Warner millions of dollars in foregone license fees and also required that Warner repay a significant sum to Microgaming to cover a portion of its development and advertising costs.

By repudiating the rights granted to Zaentz (which Zaentz then licensed to Warner), Counterclaim Defendants impaired Warner's ability to proceed with new exploitation, at a time when online gaming and gambling are becoming increasingly lucrative. Counterclaim Defendants' repudiation prevented Warner from being able to represent to third parties that it has rights or to find third parties who are willing to exploit those rights given the cloud over the rights. Warner suffered significant

1 financial harm and loss of good will as a result. Because of the repudiation, Warner
2 has not entered into license agreements for online gambling games and casino slot
3 machines in connection with *The Hobbit*—a form of customary exploitation it had
4 previously utilized in connection with *The Lord of the Rings* trilogy—which has
5 harmed Warner both in the form of lost license revenue and also in decreased
6 exposure for *The Hobbit* films. For example, Warner was unable to proceed with
7 plans for a *Hobbit*-themed casino slot machine with WMS Gaming. This alone cost
8 Warner millions of dollars in license fees. Warner has invested considerable time
9 and money into plans for further exploitation of *The Lord of the Rings* and *The*
10 *Hobbit* that it has now had to delay, reconsider, and perhaps cancel altogether as a
11 result of Counterclaim Defendants’ repudiation of Warner’s rights under the 2010
12 Regrant Agreement.

13 Warner currently estimates its damages to be in the millions of dollars,
14 although a more specific computation of damages is premature. Further, Warner
15 intends to pursue an award of its attorneys’ fees and costs pursuant to 17 U.S.C. §
16 505 following the likely dismissal of the Estate’s copyright infringement claim.
17 Warner expects that these costs and attorneys’ fees will be substantial, and will
18 continue to amass so long as the Estate continues to pursue this litigation.
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1 **IV. RULE 26(a)(1)(A)(iv): INSURANCE**

2 Warner is currently unaware of any insurance agreements as described in
3 Rule 26(a)(1)(A)(iv).

4 Dated: March 28, 2013

5 DANIEL M. PETROCELLI
6 VICTOR H. JIH
7 MOLLY M. LENS
8 O'MELVENY & MYERS LLP

9 By: 
Molly M. Lens

10 Attorneys for Warner Defendants and
11 Counterclaim Plaintiffs

PROOF OF SERVICE - BY U.S. MAIL

I am over the age of eighteen years and not a party to the within action. I am a resident of or employed in the county where the service described below occurred. My business address is 1999 Avenue of the Stars, 7th Floor, Los Angeles, California 90067-6035. On March 28, 2013, I served the following:

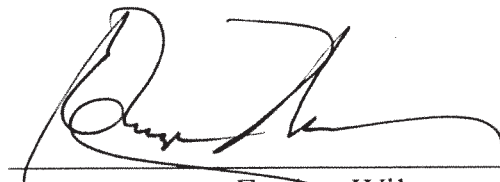
WARNER'S INITIAL DISCLOSURES

by putting a true and correct copy thereof in a sealed envelope, with postage fully prepaid, and placing the envelope for collection and mailing today with the United States Postal Service in accordance with the firm's ordinary business practices, addressed as follows:

Bonnie E. Eskenazi, Esq.
GREENBERG GLUSKER FIELDS
CLAMAN & MACHTINGER LLP
1900 Avenue of the Stars, 21st Floor
Los Angeles, CA 90067-4590

John Ulin, Esq.
ARNOLD & PORTER LLP
777 S. Figueroa Street, 44th Floor
Los Angeles, CA 90017

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on March 28, 2013, at Los Angeles, California.



Evelyn Wilson

EXHIBIT J

ARNOLD & PORTER LLP
MARTIN R. GLICK (No. 40187)
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Facsimile: 415.471.3400

Attorneys for Defendant and Counterclaim Plaintiff
THE SAUL ZAENTZ COMPANY d/b/a Middle-
earth Enterprises, a Delaware corporation

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

FOURTH AGE LIMITED, a United Kingdom
corporation; PRISCILLA MARY ANNE REUEL
TOLKIEN, as TRUSTEE OF THE TOLKIEN
TRUST, a United Kingdom Charitable Trust;
THE J.R.R. TOLKIEN ESTATE LIMITED, a
United Kingdom corporation;
HARPERCOLLINS PUBLISHERS, LTD., a
United Kingdom corporation; UNWIN HYMAN
LTD., a United Kingdom corporation; and
GEORGE ALLEN & UNWIN (PUBLISHERS)
LTD., a United Kingdom corporation,

Plaintiffs,

v.

WARNER BROS. DIGITAL DISTRIBUTION,
INC., a division of WARNER BROS. HOME
ENTERTAINMENT, INC., a Delaware
corporation; WARNER BROS.
ENTERTAINMENT, INC., a Delaware
corporation, as successor-in-interest to New Line
Cinema Corp.; WARNER BROS. CONSUMER
PRODUCTS, INC., a Delaware corporation;
WARNER BROS. INTERACTIVE
ENTERTAINMENT, INC., a division of
WARNER BROS. HOME ENTERTAINMENT,
INC., a Delaware corporation; NEW LINE
PRODUCTIONS, INC., a California corporation,
THE SAUL ZAENTZ COMPANY d/b/a Middle-
earth Enterprises, a Delaware corporation; and
DOES 1-10, inclusive,

Defendants.

Case No. 12-cv-09912-ABC (SH)

**THE SAUL ZAENTZ
COMPANY'S INITIAL
DISCLOSURES PURSUANT
TO FED. R. CIV. P. 26(a)(1)**

SZC'S INITIAL DISCLOSURES

1 THE SAUL ZAENTZ COMPANY d/b/a Middle-
2 earth Enterprises, a Delaware corporation,

3 Counterclaim Plaintiff,

4 v.

5 FOURTH AGE LIMITED, a United Kingdom
6 corporation; PRISCILLA MARY ANNE REUEL
7 TOLKIEN, as TRUSTEE OF THE TOLKIEN
8 TRUST, a United Kingdom Charitable Trust; THE
9 J.R.R. TOLKIEN ESTATE LIMITED, a United
Kingdom corporation; HARPERCOLLINS
PUBLISHERS, LTD., a United Kingdom
corporation; UNWIN HYMAN LTD., a United
Kingdom corporation; and GEORGE ALLEN &
UNWIN (PUBLISHERS) LTD., a United
Kingdom corporation,

10 Counterclaim Defendants,
11

12 Pursuant to Federal Rule of Civil Procedure 26(a)(1), Defendant and
13 Counterclaimant The Saul Zaentz Company d/b/a/ Middle-earth Enterprises, a
14 Delaware corporation (“SZC”) hereby makes the following initial disclosures to
15 Fourth Age Limited; Priscilla Mary Anne Reuel Tolkien, as Trustee of The Tolkien
16 Trust; The J.R.R. Tolkien Estate Limited; HarperCollins Publishers, Ltd.; Unwin
17 Hyman Ltd.; and George Allen & Unwin (Publishers) Ltd. (collectively “Plaintiffs”).
18 These initial disclosures are based on information now reasonably available, prior to
19 discovery and after making in good faith such inquiry and investigation concerning
20 the issues in this matter as is reasonable under the circumstances. By making these
21 disclosures, SZC does not represent that it is identifying every document, tangible
22 thing, or witness possibly relevant to this lawsuit. SZC expressly reserves the right to
23 correct or supplement these disclosures pursuant to Federal Rule of Civil Procedure
24 26(e) should it subsequently become aware of additional relevant information to be
25 disclosed. These disclosures are further made without waiving: (1) the right to
26 object on any proper ground to the use of any information contained herein for any
27 purpose in any subsequent proceeding in this action or any other action; and (2) the
28 right to object on any and all grounds, at any time, to any other discovery request or

SZC’S INITIAL DISCLOSURES

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proceeding involving or relating to the subject matter of these disclosures.

INITIAL DISCLOSURES

A. Individuals Likely to Have Information That SZC May Use

Pursuant to Rule 26(a)(1)(A)(i), SZC hereby discloses the following individuals known to it at this time who are likely to have discoverable information, along with the subject of that information, that SZC may use to support its claims or defenses, unless solely for impeachment. This list is necessarily preliminary, insofar as SZC is still gathering information about its claims and defenses, and Plaintiffs have yet to respond to interrogatories requesting information about the nature of Plaintiffs' claims. SZC will supplement its witness list as necessary once discovery has progressed further, and once it has further considered which third-party, Plaintiff, and/or Co-Defendant witnesses are likely to have discoverable information that SZC may use to support its claims or defenses.

SZC reserves the right to supplement this list and/or call at trial or subpoena for deposition additional individuals, including calling at trial as its own witnesses any witnesses designated by Plaintiffs or Co-Defendants or introducing portions of these individuals' deposition testimony at trial. To the extent that any other party fails to call at trial any or all of its disclosed witnesses, SZC reserves the right to call them as witnesses and/or to introduce at trial relevant portions of their deposition testimony. The individuals identified with SZC or Arnold & Porter LLP may be contacted in this action only through SZC's litigation counsel, Arnold & Porter LLP.

Witness Identification

Subject Matter

- | | |
|--------------------------|--|
| 1. Albert Bendich (SZC) | SZC's intellectual property and products; the parties' course of conduct concerning SZC's rights; SZC's licensing practices. |
| 2. Fredrica Drotos (SZC) | SZC's intellectual property and products and licensing practices. |
| 3. Paul Zaentz (SZC) | The parties' course of conduct concerning SZC's rights; SZC's intellectual property and products and licensing practices. |

SZC'S INITIAL DISCLOSURES

- 1 4. Laurie Battle (SZC) The parties' course of conduct
2 concerning SZC's rights; SZC's
3 intellectual property and products and
4 licensing practices.
- 5 5. Thomas Magnani (Arnold & Porter
6 LLP) SZC's intellectual property, trademark
7 prosecution, and licensing practices.
- 8 6. Carole Barrett (Arnold & Porter LLP) SZC's intellectual property, trademark
9 prosecution, and licensing practices.
- 10 7. Cathleen Blackburn The parties' course of conduct
11 concerning SZC's rights; Plaintiffs'
12 awareness and encouragement of SZC's
13 licensing, prosecution, and enforcement
14 activities; Plaintiffs' repudiation of
15 SZC's rights.
- 16 8. Stephen Maier The parties' course of conduct
17 concerning SZC's rights; Plaintiffs'
18 awareness and encouragement of SZC's
19 licensing, prosecution, and enforcement
20 activities; Plaintiffs' repudiation of
21 SZC's rights.
- 22 9. Frank Richard Williamson Plaintiffs' grant of rights to SZC; the
23 parties' course of conduct concerning
24 SZC's rights; Plaintiffs' awareness and
25 encouragement of SZC's licensing,
26 prosecution, and enforcement activities.
- 27 10. Steven Maier Plaintiffs' awareness and encouragement
28 of SZC's licensing, prosecution, and
enforcement activities.
11. Bonnie Eskenazi Plaintiffs' awareness of SZC's licensing,
prosecution, and enforcement activities;
Parties' agreements, including rights
granted and negotiations; Plaintiffs'
repudiation of SZC's rights
12. Ricardo Cestero Plaintiffs' awareness of SZC's licensing,
prosecution, and enforcement activities;
Parties' agreements, including rights
granted and negotiations; Plaintiffs'
repudiation of SZC's rights
13. Elisabeth Moriarty Plaintiffs' awareness of SZC's licensing,
prosecution, and enforcement activities;
Parties' agreements, including rights
granted and negotiations; Plaintiffs'
repudiation of SZC's rights

SZC'S INITIAL DISCLOSURES

- 1 14.Christopher Tolkien Plaintiffs' awareness and encouragement
2 of SZC's licensing, prosecution, and
3 enforcement activities; Plaintiffs'
4 repudiation of SZC's rights.
- 5 15.Baillie Tolkien Plaintiffs' awareness and encouragement
6 of SZC's licensing, prosecution, and
7 enforcement activities; Plaintiffs'
8 repudiation of SZC's rights.
- 9 16. Priscilla Mary Anne Reuel Tolkien Plaintiffs' awareness and encouragement
10 of SZC's licensing, prosecution, and
11 enforcement activities; Plaintiffs'
12 repudiation of SZC's rights.
- 13 17. Adrian Laing Plaintiffs' awareness and encouragement
14 of SZC's licensing, prosecution, and
15 enforcement activities
- 16 18. David Brawn Plaintiffs' awareness and encouragement
17 of SZC's licensing, prosecution, and
18 enforcement activities
- 19 19. David Daley Plaintiffs' awareness and encouragement
20 of SZC's licensing, prosecution, and
21 enforcement activities
- 22 20.Simon Dowson-Collins Plaintiffs' awareness and encouragement
23 of SZC's licensing, prosecution, and
24 enforcement activities; Plaintiffs'
25 repudiation of SZC's rights

17 **B. Documents**

18 Pursuant to Rule 26(a)(1)(A)(ii), SZC identifies the following categories of
19 "documents, electronically stored information, and tangible things" within SZC's
20 "possession, custody, or control" that SZC may use to support its claims and
21 defenses. The potential location(s) of each category is indicated in parentheses. SZC
22 preserves its objections to production of specific documents and categories of
23 documents until requested. In addition, a protective order sufficient to protect SZC's
24 confidential information will need to be entered prior to production of any
25 confidential documents. These categories include, but are not limited, to the
26 following:

- 27 1. Documents relating to the 1969 Agreements, as defined in SZC's
28 Counterclaims, and to SZC's rights in the trademarks at issue, including but not

SZC'S INITIAL DISCLOSURES

limited to: Contracts A and B and Schedules D thereto, dated July 8, 1969; Amendments to Schedules D dated October 20, 1975 and November 16, 1981; the Agreement and Assignment dated December 2, 1976; the Declaration of Frank Richard Williamson, dated December 2, 1977; and the Letter Agreement of July 31, 1978 (Berkeley, California);

2. Documents relating to SZC's registration, licensing to third parties, and enforcement of rights in the trademarks at issue, as well as Plaintiffs' ongoing awareness of such activities, including but not limited to: documents sufficient to show SZC's decades-long registration of the marks world-wide; SZC's licenses concerning such marks; and correspondence between and among SZC and Plaintiffs dated June 5, 1998, May 15, 2002, March 17, 2004, April 30, 2004, September 20, 2006, May 2, 2007, June 8, 2007, October 18, 2007 (Berkeley, California);
3. Documents relating to SZC's rights in and licensing of video games relating to the Tolkien Works, and the Plaintiffs' awareness of such activities, including but not limited to: letters between SZC and Plaintiffs dated May 16, 1996 and July 18, 1996; correspondence between and among SZC and Plaintiffs dated March 5, 1998, August 5, 1998, October 13, 1998, November 2, 1998, November 12, 1998, August 3, 2000 and August 4, 2000; a contract between SZC and Cendant Software Corporation dated May 6, 1998; and presentations and proposals to Plaintiffs dated August 31, 2005 (Berkeley, California); and
4. Documents relating to SZC's enforcement of its rights in the trademarks at issue, including but not limited to: cease-and-desist letters to infringing and potentially infringing parties; documents sufficient to show litigation efforts undertaken by SZC to protect and enforce rights in the marks; and documents showing Plaintiffs' awareness and encouragement of SZC's actions in this regard (Berkeley, California).

At Plaintiffs' request, SZC will permit inspection and/or copying of these

SZC'S INITIAL DISCLOSURES

1 documents, including its confidential documents after an appropriate Protective Order
2 is entered in this action.

3 SZC is producing documents in response to Plaintiffs' discovery requests for the
4 production of documents upon which SZC may rely to support its claims and
5 defenses.

6 SZC reserves the right to amend or supplement this document disclosure
7 pursuant to Federal Rule of Civil Procedure 26(e) if additional documents are
8 identified as pertinent to disputed facts. SZC further reserves the right to supplement
9 or modify this disclosure to the extent that Plaintiffs may further particularize claims
10 or contentions. SZC is not providing documents or information not reasonably
11 available at this time.

12 **C. Computation of Damages**

13 Pursuant to Rule 26(a)(1)(A)(iii), SZC identifies the following categories of
14 damages:

- 15 1. Lost revenue from termination of prior licensing agreements arising from
16 Plaintiffs' repudiation;
- 17 2. Lost revenue from potential licensing agreements following from
18 Plaintiffs' repudiation;
- 19 3. The reasonable value of SZC's registration and enforcement activities;
- 20 4. Prejudgment interest;
- 21 5. Attorney's fees; and
- 22 6. Costs of suit.

23 SZC's computation of damages will be prepared by an expert witness and will
24 be provided at such time as set forth in the case management order.

25 **D. Insurance Agreements**

26 SZC is not aware of any applicable insurance agreements.

27
28 SZC'S INITIAL DISCLOSURES

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1 Dated: March 28, 2013

ARNOLD & PORTER LLP

2
3 By:


Martin R. Glick

John C. Ulin

4 Sean M. Callagy

5 Attorneys for Defendant and
6 Counterclaim Plaintiff THE SAUL
7 ZAENTZ COMPANY d/b/a Middle-
8 earth Enterprises, a Delaware
9 corporation
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